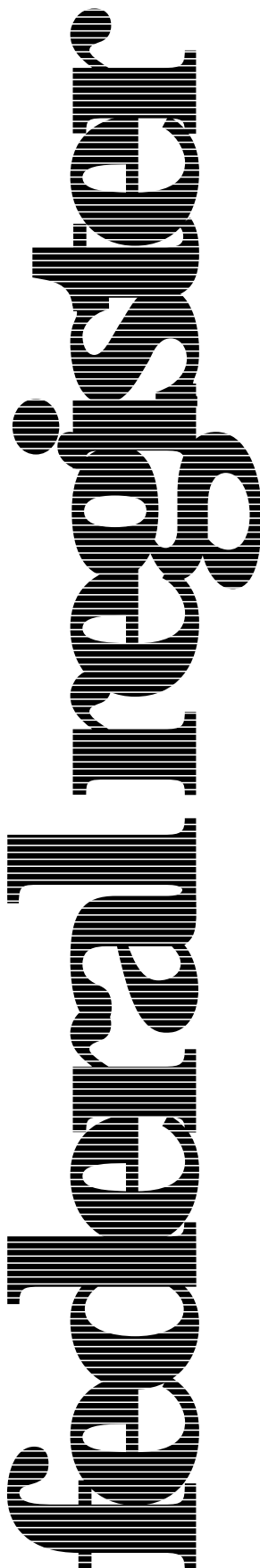


Tuesday
April 29, 1997



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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 300

RIN 3206-AH71

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to remove the requirements for agency heads to ensure that employees and applicants for employment at their agencies are notified of provisions enacted in the Hatch Act Reform Amendments of 1993 (Reform Amendments). This act prohibited individuals from requesting, making, transmitting, accepting, or considering political recommendations in effecting personnel actions and has been superseded by an amendment to the Reform Amendments.

EFFECTIVE DATE: May 29, 1997.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, (202) 606-1700.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(b)(3)(B) of title 5, United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the OPM regulation at subpart H of 5 CFR part 300 has been superseded by statute, i.e., section 315 of Public Law 104-197.

The Reform Amendments covered both the excepted service and career Senior Executive Service as well as the competitive service. Under the Reform Amendments, employees and applicants were prohibited from soliciting or requesting political recommendations, and agency officials were prohibited

from soliciting, requesting, considering or accepting such recommendations. Senators, congressmen, congressional employees, elected State and local officials, political party officials, and other individuals or organizations also were prohibited from making or transmitting political recommendations. The Reform Amendments required agency officials who received political recommendations to return the recommendations to the persons who sent them, with a notation stating that the recommendations violated the Reform Amendments' prohibition against political recommendations.

Under the Reform Amendments, the prohibition against political recommendations extended to all of the personnel actions described in 5 U.S.C. 2302(a)(2)(A)(I)-(ix), including appointments, promotions, disciplinary or corrective actions, details, transfers, reassignments, reinstatements, restorations, reemployment, performance evaluations, and decisions concerning pay, benefits, or awards. Finally, the Reform Amendments directed OPM to promulgate regulations requiring agency heads to ensure that employees and applicants received notice of the prohibitions against political recommendations.

Congress enacted section 315 of Public Law 104-197 on September 16, 1996, and it became effective on October 16, 1996. Section 315 amended 5 U.S.C. 3303 by limiting its application to examinations for, or appointments to, positions in the competitive service. It further amended section 3303 by prohibiting examining and appointing officials from accepting or considering congressional recommendations of applicants except for recommendations about an applicant's character or residence.

Section 315 also amended 5 U.S.C. 2302(b)(2) by making it a prohibited personnel practice to solicit or consider recommendations or statements regarding individuals who request, or are under consideration for, any personnel action. The amended section 2302(b)(2), however, permits recommendations or statements based on the personal knowledge or records of the person furnishing them, and consisting of an evaluation of the work

performance, ability, aptitude, general qualifications, character, loyalty, or suitability of an individual. Finally, section 315 does not direct OPM to issue regulations requiring agency heads to ensure that employees and applicants receive notice of its provisions. Because section 315 of Public Law 104-197 clearly supersedes the OPM regulation at subpart H of 5 CFR part 300, OPM is removing subpart H from the regulation.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 300

Freedom of Information, Government employees, Reporting and record keeping requirements, Selective Service System.

U.S. Office of Personnel Management.

James B. King,
Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 300 as follows:

PART 300—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966-1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Subpart H—[Removed]

2. Subpart H is removed.

[FR Doc. 97-11058 Filed 4-28-97; 8:45 am]

BILLING CODE 6325-01-M

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 334**

RIN 3206-AG61

**Intergovernmental Personnel Act
Mobility Program****AGENCY:** Office of Personnel
Management.**ACTION:** Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing mobility assignments between Federal agencies and non-Federal entities. In keeping with the OPM philosophy of transferring more responsibility for operational programs to agencies, these revised regulations will allow agencies to operate the mobility program in a more efficient and productive manner.

EFFECTIVE DATE: May 29, 1997.

FOR FURTHER INFORMATION CONTACT:
Tony Ryan on 202-606-1181 or FAX
202-606-3577.

SUPPLEMENTARY INFORMATION: By Executive Order 11589 of April 1, 1971, the President delegated to the Office of Personnel Management the authority to issue regulations necessary to administer the temporary assignment of personnel between the Federal Government and State or local governments, institutions of higher education, Indian tribal governments and other eligible organizations (the Intergovernmental Personnel Act Mobility Program).

On December 11, 1996, OPM published a proposed revision of its regulations (61 FR 65189) dealing with this program for a 30-day comment period. We received comments from sixteen Federal agencies. The Department of Energy (DOE) recommended that we remove federally funded research and development centers from the definition of "other organization" in § 334.102. Since an "other organization" must be certified to participate, and federally funded research and development centers which are on a list maintained by the National Science Foundation (NSF) are automatically eligible, we agree with this suggestion and, consequently, § 334.102, as it currently appears in the regulations, will not be changed.

Throughout the proposed regulations there are references to "the head of the Federal agency." The Department of Justice suggested that we add "or his or her designee" after this phrase. Since, in many agencies, the IPA program has already been delegated to Bureau or

Component level or below, this suggestion seems to mirror the way things actually are. Changes have been made where needed.

Section 334.103 deals with organizations which must be approved for participation in the IPA program. This approval or certification process is being shifted from OPM to agencies. Federal agencies will now deal directly with those non-Federal entities with whom they hope to share an assignment. If an organization is certified by an agency, this certification is permanent and may apply throughout the Federal Government. Another agency can accept this certification or require the organization to submit the appropriate paperwork for review. If an organization is denied certification, it may appeal this denial to OPM. The Department of Transportation asked if those organizations that have already been certified will be "grandfathered" in when this change occurs. No, they will not. As of the effective date of these regulations, any organization wishing to participate in the mobility program will need to be certified or recertified when they enter into an IPA agreement. Those organizations in a current assignment on the effective date of these regulations may complete those assignments, but will need to go through the certification process before starting a new assignment.

Many agencies, including the Departments of Commerce and Defense as well as the Equal Employment Opportunity Commission, thought that OPM should maintain a clearinghouse of organizations which have had their eligibility certified. However, we feel that a clearinghouse is unnecessary. An agency could simply ask an organization whether it had already been certified by another Federal agency. If it had, then that certification, once verified, would allow an agency to move ahead with a new IPA assignment. This removes a heavy administrative responsibility from OPM but does not unduly impact other Federal agencies. One agency, DOE, pointed out that it is actually "eligibility" which agencies are certifying, not "notprofit status." We have revised § 334.103(a) to reflect this distinction.

We received numerous comments regarding § 334.104, which deals with the length of the IPA assignment. Some agencies believe that the proposed provisions are more restrictive than the present ones. A few agencies, including NSF, felt that rather than providing additional flexibility, the suggested changes actually limit the flexibility they now have under the current regulations.

Section 334.104(b) would place a 6-year lifetime on both Federal and non-Federal assignees. This drew quite a bit of criticism from agencies, especially those involved in research and development (R&D) like the Office of Naval Research. They felt that this regulation could severely damage their ability to utilize non-Federal scientific expertise. They argue that it takes a considerable amount of time for a scientist to become knowledgeable on a research project and it would be fiscally irresponsible to have to bring in a new person because of the 6-year limit. We certainly don't want to limit the flexibility agencies will need to effectively operate this program by placing unnecessary regulatory burdens on them. Section 334.104(b) has been changed in order to remove the 6-year limit on non-Federal assignees. The limit remains for Federal employees.

There was also considerable concern with § 334.104(c), which would require individuals to return to their original employers at the end of an assignment for a length of time equal to the assignment before participating again in the IPA program. The Department of Transportation felt that there might be a valid situation, because of an individual's special expertise, when such a break could be detrimental to the agency. Others thought the proposal has the potential to increase costs dramatically and impact mission accomplishment. We will modify § 334.104(c) to reflect the current requirement of a 12-month break after four years on assignment.

Section 334.105(a) requires Federal employees to serve with the Federal Government upon completion of their assignment for a period equal to the length of the assignment. This is known as the obligated service requirement. The Department of the Navy would like to see this section done away with. However, one of the original objectives of the mobility program was to "provide program and developmental experience which will enhance the assignee's performance in his or her regular job." This requirement assures that the individual will return to his or her Federal Government job with newly acquired skills. Therefore, we feel it is too important to discard. There are no changes to this section.

Section 334.105(b) requires an employee, who fails to carry out the provisions of § 334.105(a), to reimburse the Federal agency for its share of the costs of the assignment. These costs, however, do not include salary or, as noted by one of the agencies, benefits. This requires a minor change to § 334.105(b). In addition, this section

also allows for a waiver of the reimbursement when the agency head, or his or her designee, feel there is good and sufficient reason to do so. This waiver authority should provide sufficient flexibility for those agencies concerned about the severity of § 334.105(a).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 334

College and universities, Government employees, Indians, Intergovernmental relations.

U.S. Office of Personnel Management.

James B. King,
Director.

Accordingly, OPM is amending part 334 of title 5, Code of Federal Regulations:

PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN FEDERAL AGENCIES AND STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER ELIGIBLE ORGANIZATIONS.

1. The authority citation for part 334 continues to read as follows:

Authority: 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971–1975).

2. Section 334.103 is revised to read as follows:

334.103 Approval of instrumentalities or authorities of State and local governments and “other organizations”.

(a) Organizations interested in participating in the mobility program as an instrumentality or authority of a State or local government or as an “other organization” as set out in this part must have their eligibility certified by the Federal agency with which they are entering into an assignment.

(b) Written requests for certification should include a copy of the organization's:

- (1) Articles of incorporation;
- (2) Bylaws;
- (3) Internal Revenue Service nonprofit statement; and
- (4) Any other information which indicates that the organization has as a principal function the offering of professional advisory, research, educational, or development services, or related services to governments or universities concerned with public management.

(c) Federally funded research and development centers which appear on a master list maintained by the National Science Foundation are eligible to enter into mobility agreements.

(d) An organization denied certification by an agency may request reconsideration by the Office of Personnel Management.

3. Section 334.104 is revised to read as follows:

§ 334.104 Length of assignment.

(a) An assignment may be made for up to 2 years and may be extended by the head of a Federal agency, or his or her designee, for up to 2 more years, given the concurrence of the other parties to the agreement.

(b) A Federal agency may not send on assignment an employee who has served on mobility assignments for more than a total of 6 years during his or her Federal career. This applies only to Federal employees. The Office of Personnel Management may waive this provision upon the written request of the agency head, or his or her designee.

(c) A Federal agency may not send or receive on assignment an employee who has served under the mobility authority for 4 continuous years without at least a 12-month return to duty with the organization from which originally assigned.

4. Section 334.105 is revised to read as follows:

§ 334.105 Obligated Service Requirement.

(a) A Federal employee assigned under this subchapter must agree as a condition of accepting an assignment to serve with the Federal Government upon completion of the assignment for a period equal to the length of the assignment.

(b) If the employee fails to carry out this agreement, he or she must reimburse the Federal agency for its share of the costs of the assignment (exclusive of salary and benefits). The head of the Federal agency, or his or her designee, may waive this reimbursement for good and sufficient reason.

5. Section 334.106 is revised to read as follows:

§ 334.106 Requirement for written agreement.

(a) Before an assignment is made the Federal agency and the State, local, or Indian tribal government, institution of higher education, or other eligible organization and the assigned employee shall enter into a written agreement which records the obligations and responsibilities of the parties as specified in 5 U.S. Code 3373–3375.

(b) Agencies must maintain a copy of each assignment agreement form as well as any modification to the agreement.

[FR Doc. 97–11048 Filed 4–28–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; correcting amendment.

SUMMARY: The Office of Government Ethics is correcting a minor error in its final personal financial interests regulation.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: On December 18, 1996, OGE published its executive branchwide final regulation on interpretation, exemptions and waiver guidance concerning 18 U.S.C. 208 (acts affecting a personal financial interest). See 61 FR 66830–66851 (part III), as corrected at 62 FR 1361 (January 9, 1997), and now codified at 5 CFR part 2640. In the December 1996 final rule preamble, at 61 FR 66837, OGE indicated that in response to an agency comment it had determined to delete the word “vested” in a passage of § 2640.203(a) referring to pension plans as set forth in the prior proposed rule text. However, in the regulatory text of that section of the final rule, as issued at 61 FR 66847, OGE inadvertently did not delete the word “vested”. This amendatory document corrects that oversight by removing the word “vested” from that section of the regulation.

Executive Order 12866

In promulgating this final rule correcting amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed

by the Office of Management and Budget under that Executive order, as it is not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule correction will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this correcting amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: April 23, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is correcting 5 CFR part 2640 as follows:

PART 2640—[CORRECTED]

1. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2640.203(a)(2) [Corrected]

2. Section 2640.203(a)(2) is corrected by removing the word "vested" from between the words "a" and "pension".

[FR Doc. 97-11026 Filed 4-28-97; 8:45 am]

BILLING CODE 6345-01-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Sulfadimethoxine Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for use of sulfadimethoxine injection in cattle for treatment of certain bacterial infections.

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Center For Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1623.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Ter., P.O. Box 6457, St. Joseph, MO 64506-0457, filed ANADA 200-177, which provides for intravenous use of sulfadimethoxine injection in cattle for treatment of bovine respiratory disease (shipping fever complex), bacterial pneumonia, calf diphtheria, and foot-rot.

Approval of Phoenix's ANADA 200-177 for sulfadimethoxine injection is as a generic copy of Pfizer's NADA 41-245 for Albon® (sulfadimethoxine) Injection 40 percent. The ANADA is approved as of March 13, 1997, and the regulations are amended by adding new 21 CFR 522.2220(a)(2)(iii) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.2220 is amended by adding new paragraph (a)(2)(iii) to read as follows:

§ 522.2220 Sulfadimethoxine injection.

(a) * * *

(2) * * *

(iii) See No. 059130 for use as in paragraph (a)(3)(iii) of this section.

* * * * *

Dated: April 8, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97-10979 Filed 4-28-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinat

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Rhone-Poulenc, Inc. The supplemental NADA provides for certain revisions in the Type C medicated feed fed for prevention of coccidiosis in cattle, sheep, and goats.

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT:

Melanie R. Berson, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1643.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08851, filed supplemental NADA 39-417, which provides for use of 6 percent decoquinat Type A medicated article to make 0.06 to 0.6 percent decoquinat Type B feeds to make 0.0015 to 0.059 percent decoquinat Type C medicated feed for cattle, sheep, and goats for prevention of coccidiosis. The supplemental NADA is approved as of

March 7, 1997, and the regulations are amended in 21 CFR 558.195(c) and (d) to reflect the approval.

The supplemental NADA does not contain added safety or effectiveness data. Therefore, a freedom of information (FOI) summary for the supplemental approval is not required. An FOI summary for the currently approved application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.195 is amended by adding new paragraph (c)(2) and in the table in paragraph (d) a new entry for "13.6 to 535.7 (0.0015 to 0.059 pct)" to read as follows:

§ 558.195 Decoquinatone.

* * * * *

(c) * * *

(2) Type A medicated articles containing 6 percent decoquinatone may be used to make dry or liquid Type B cattle (including veal calf), sheep, and goat feeds as in paragraph (d) of this section.

(d) * * *

Decoquinatone in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
13.6 to 535.7 (0.0015 to 0.059 pct)		Cattle: prevention of coccidiosis in ruminating and nonruminating calves (including veal calves) and cattle caused by <i>Eimeria bovis</i> and <i>E. zurnii</i> .	Feed Type C feed (including dry milk replacer) to provide 22.7 mg per 100 lb body weight (0.5 mg per kg) per day. May be prepared from dry Type B feed containing 0.06 to 0.6 pct decoquinatone or liquid Type B feed containing 0.0125 to 0.05 pct decoquinatone. The liquid Type B feed must have pH 5.0 to 6.5 and contain a suspending agent to maintain a viscosity of not less than 500 centipoises. Feed at least 28 days during period of exposure to coccidiosis or when it is likely to be a hazard. Do not feed to animals producing milk for food.	011526
		Young sheep: prevention of coccidiosis caused by <i>Eimeria ovinoidalis</i> , <i>E. parva</i> , <i>E. bakuensis</i> , <i>E. crandallis</i> .	do	do
		Young goats: prevention of coccidiosis caused by <i>Eimeria christenseni</i> , <i>E. ninakohlyakimovae</i> .	do	do
*	*	*	*	*

Dated: April 8, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
[FR Doc. 97-10986 Filed 4-28-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR-027-FOR]

Arkansas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Arkansas regulatory program and abandoned mine land reclamation plan (hereinafter referred to as the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1997 (SMCRA). Arkansas proposed revisions to and additions of rules pertaining to termination of jurisdiction, permit fees, minimum required permit application information, remaining ownership an control, permit approval or denial, small operator assistance, bond and insurance, water replacement, subsidence damage repair/compensation, performance standards, inspections, and abandoned mine land reclamation requirements.

Arkansas also proposed to remove duplicated regulation sections for surface and underground mining permit applications pertaining to general requirements for the description of hydrology and geology, groundwater information, surface water information, alternative water supply information, fish and wildlife resources information, and land use information. The purpose of the amendment is to update the Arkansas program as a result of amendments to OSM's regulations and to enhance the enforcement of the State's program.

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT: Dwight Thomas, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6458, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Arkansas Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas regulatory program. Background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 904.10, 904.12, 904.15, and 904.16.

On May 2, 1983, the Secretary of the Interior approved the Arkansas abandoned mine land reclamation plan. General background information on the Arkansas plan, including the Secretary's findings and the disposition of comments, can be found in the May 2, 1983, **Federal Register** (48 FR 19710). Subsequent actions concerning amendments to the plan can be found at 30 CFR 904.25 and 904.26.

II. Submission of the Proposed Amendment

By letter dated April 2, 1996 (Administrative Record No. AR-557), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment, at its own initiative, as a result of amendments to Title 30, Chapter VII of the Code of

Federal Regulations (CFR) and to enhance the enforcement of the State program. Arkansas proposed to revise the following sections of its regulations: ASCMRC Section 700.10(b), Termination of jurisdiction; ASCMRC Section 701.5, Definitions for "drinking, domestic or residential water supply," "lands eligible for reining," "material damage," "non-commercial building," "occupied residential dwelling and structures related thereto," "previously mined area," "replacement of water supply," and "unanticipated event or condition"; ASCMRC Section 761.12(h), Procedures; ASCMRC Section 771.25(b), Permit fees; ASCMRC Section 778.14(c), Compliance information; ASCMRC Section 778.18, Personal injury and property insurance information; ASCMRC Section 779.19(b), Vegetation information; ASCMRC Section 779.25(k), Cross-sections, maps, and plans; ASCMRC Section 780.21 and 784.14, Hydrologic information; ASCMRC Section 780.23 and 784.15, Land use information; ASCMRC Section 780.25 and 784.16, Ponds, impoundments, banks, dams and embankments; ASCMRC Section 784.20, Subsidence control; ASCMRC Section 784.25(a), Return of coal processing waste to abandoned underground workings; ASCMRC Section 785.25, Lands eligible for reining; ASCMRC Section 786.5(b), Definitions for "applicant/violator system or AVS," "federal violation notice," "ownership or control link," "state violation notice," and "violation notice"; ASCMRC Section 786.11(c)(2), Public notices of filing of permit applications; ASCMRC Section 786.17(c)(1), (c)(2), and (c)(4), Review of violations; ASCMRC Section 786.19(q)-(r), Criteria for permit approval or denial; ASCMRC Section 786.30, Improvidently issued permits: General procedures; ASCMRC Section 786.31, Improvidently issued permits: Rescission procedures; ASCMRC Section 786.32, Verification of ownership or control application information; ASCMRC Section 786.33, Review of ownership or control violation information; ASCMRC Section 786.34, Procedures for challenging ownership or control links shown in AVS; ASCMRC Section 786.35, Standards for challenging ownership or control links and the status of violations; ASCMRC Section 788.14(a)(3), Permit renewals: Completed applications; ASCMRC Section 795.12, Program services; ASCMRC Section 795.13(a)(2), Eligibility for assistance; ASCMRC Section 795.17, Qualified laboratories; ASCMRC Section 795.19, Applicant

liability; ASCMRC Part 800, General requirements for bonding of surface coal mining and reclamation operations under the state program; ASCMRC Section 816.41(e), Hydrologic balance protection; ASCMRC Section 816.46(a), (c)(2) through (c)(4), Hydrologic balance: Siltation structures; ASCMRC Section 816.49, Impoundments; ASCMRC Section 816.81, Coal mine waste: General requirements; ASCMRC Section 816.116(c)(2) through (c)(4), Revegetation: Standards for success; ASCMRC Section 816.121-U(a) through (g), Subsidence control: General requirements; ASCMRC Section 816.122-U, Subsidence control: Public notice; ASCMRC Section 827.12(e) and (g), Coal processing plants: Performance standards; ASCMRC Section 842.11(c) through (f), Inspections; ASCMRC Section 842.14, Review of adequacy and completeness of inspections; ASCMRC Section 874.5, Definition for "left or abandoned in either an unreclaimed or inadequately reclaimed condition"; and ASCMRC Section 874.12(a)(4) through (a)(8), Eligible lands and water.

Arkansas also proposed to remove the following sections from its regulations: ASCMRC Section 779.13 and 783.13, Description of hydrology and geology: General requirements; ASCMRC 779.15 and 783.15, Groundwater information; ASCMRC 779.16 and 783.16, Surface water information; ASCMRC 779.17 and 783.17, Alternative water supply information; ASCMRC 779.20 and 783.20, Fish and wildlife resources information; ASCMRC Section 779.22 and 783.22, Land use information; ASCMRC Section 795.16, Data requirements; ASCMRC Part 805, Amount and duration of performance bond; ASCMRC Part 806, Forms, conditions, and terms of performance bonds and liability insurance; ASCMRC Part 807, Procedures, criteria and schedule for release of performance bond; ASCMRC Part 808, Performance bond forfeiture criteria and procedures; ASCMRC Section 816.82, Coal processing waste banks: Site inspection; ASCMRC Section 816.85, Coal processing waste banks: Construction requirements; ASCMRC Section 816.86, Coal processing waste: Burning; ASCMRC Section 816.88, Coal processing waste: Return to underground workings; ASCMRC Section 816.89, Disposal of noncoal mine wastes; ASCMRC Section 816.91 through .93, Coal processing waste: Dams and embankments; ASCMRC Section 816.112, Revegetation: Use of introduced species; ASCMRC Section 816.124-U, Subsidence control: Surface owner protection; and ASCMRC Section

816.126-U, Subsidence control: Buffer zones.

OSM announced receipt of the proposed amendment in the May 3, 1996, **Federal Register** (61 FR 19881), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 3, 1996.

During its review of the amendment, OSM identified concerns relating to ASCMRC Section 786.34, Procedures for challenging ownership or control links shown in AVS; ASCMRC Section 816.49, Impoundments; typographical errors; and a number of incorrect reference citations. OSM notified Arkansas of these concerns by electronic mail (E-mail) dated October 22, 1996 (Administrative Record No. AR-557.07).

By letter dated December 9, 1996 (Administrative Record No. AR-557.06), and a telephone facsimile (fax) dated January 7, 1997 (Administrative Record No. AR-557.08), Arkansas responded to OSM's concerns by submitting revisions to its proposed program amendment. Arkansas proposed additional revisions to ASCMRC 786.34, Procedures for challenging ownership or control links shown in AVS; ASCMRC 795.19, Applicant liability; and ASCMRC 816.49, Impoundments, and proposed to correct typographical errors and a number of incorrect reference citations.

Based upon the revisions to the proposed program amendment submitted by Arkansas, OSM reopened the public comment period in the January 30, 1997, **Federal Register** (62 FR 4499). The public comment period closed on February 14, 1997.

In a letter dated February 19, 1997 (Administrative Record No. AR-557.12), Arkansas withdrew its proposed revisions concerning ownership and control. Therefore, the following proposed revisions originally submitted on April 2, 1996, are withdrawn and will not be addressed in this final rule: ASCMRC 778.14(c), Compliance information; ASCMRC 786.5(b), Definitions for "applicant/violator system or AVS," "federal violation notice," "ownership or control link," "state violation notice," and "violation notice"; ASCMRC 786.17(c)(1) and (c)(2), Review of violations; ASCMRC 786.30, Improvidently issued permits: General procedures; ASCMRC Section 786.31, Improvidently issued permits: Rescission procedures; ASCMRC Section 786.32, Verification of ownership or control application information; ASCMRC Section 786.33, Review of ownership or control violation information; ASCMRC Section 786.34, Procedures for challenging ownership or control links shown in AVS; and ASCMRC Section 786.35, Standards for challenging ownership or

control links and the status of violations.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes or revised regulation references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Arkansas's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. Revisions to Existing Regulations and New Regulations

a. *The proposed State regulations listed in the following table contain language that is the same as or similar to the corresponding sections of SMCRA and/or the Federal regulations.* The amendments contain additions and/or changes to the existing State regulations. Differences between the proposed State regulations and SMCRA and/or the Federal regulations are nonsubstantive, or the proposed State amendments involve provisions that add specificity and do not adversely affect other aspects of the program.

Topic	State regulation(s)	Federal counterpart regulation(s)
General		
Termination of jurisdiction	ASCMRC 700.10(b)	30 CFR 700.11(d)
State Program		
Definitions: Drinking, domestic or residential water supply; Lands eligible for remining; Material damage; Non-commercial building; Occupied residential dwelling and structures related thereto; Previously mined area; Replacement of water supply; Unanticipated event or condition.	ASCMRC 701.5	30 CFR 701.5
Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan		
Reclamation plan: Hydrologic information	ASCMRC 780.21(f)(3)(v)	30 CFR 784.14(e)(3)(iv)
Reclamation plan: Land use information	ASCMRC 780.23	30 CFR 780.23
Reclamation plan: Siltation structures, impoundments, banks, dams and embankments.	ASCMRC 780.25	30 CFR 780.25
Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan		
Subsidence control plan	ASCMRC 784.20	30 CFR 784.20
Requirements for Permits for Special Categories of Mining		
Lands eligible for remining	ASCMRC 785.25	30 CFR 785.25
Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions		
Review of violations	ASCMRC 786.17(c)(4)	30 CFR 773.15(b)(4)
Criteria for permit approval or denial	ASCMRC 786.19 (q) and (r).	30 CFR 773.15(c)(12) and (c)(13)

Topic	State regulation(s)	Federal counterpart regulation(s)
Small Operator Assistance		
Program services and data requirements	ASCMRC 795.12	30 CFR 795.9
Eligibility for assistance	ASCMRC 795.13 (a)(2), (a)(2)(i) and (a)(2)(ii).	30 CFR 795.6 (a)(2), (a)(2)(i) and (a)(2)(ii)
Qualified laboratory, General	ASCMRC 795.17(a)(1)	30 CFR 795.3
Applicant liability	ASCMRC 795.19(a)(1)	30 CFR 795.12
Permanent Program Performance Standards		
Drinking, domestic or residential water supply	ASCMRC 816.41(e)	30 CFR 816.41(j)
Hydrologic balance: Siltation structures—Definition for "other treatment facilities"	ASCMRC 816.46(a)(3)	30 CFR 701.5
Sedimentation ponds—Spillways	ASCMRC 816.46(c)(2)	30 CFR 816.46(c)(2)
Coal mine waste: General requirements	ASCMRC 816.81(a) and (c)(2).	30 CFR 816.81(a) and (c)(2)
Revegetation: Standards for success	ASCMRC 816.116(c)(2)(i) and (c)(2)(ii).	30 CFR 816.116(c)(2)(i) and (c)(2)(ii)
Subsidence control: Public notice	ASCMRC 816.122-U	30 CFR 817.122
Coal processing plants: Performance standards	ASCMRC 827.12(g)	30 CFR 827.12(e)
Inspection and Enforcement Procedures		
Inspections	ASCMRC 842.11(c)–(f)	30 CFR 842.11(c)–(f)
Review of adequacy and completeness of inspections	ASCMRC 842.14	30 CFR 842.14
Abandoned Mine Land Reclamation—General Reclamation Requirements		
Definition: Left or abandoned in either an unreclaimed or inadequately reclaimed condition.	ASCMRC 874.5	30 CFR 870.5
Eligible lands and water	ASCMRC 874.12(a)(4)– (a)(8).	30 CFR 874.12(d)–(h)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Arkansas's proposed rules are no less effective than the Federal regulations and is approving them.

The Director is also removing the required program amendment at 30 CFR 904.16(a) concerning the definition of the term "lands eligible for reining" because Arkansas proposed the definition at ASCMRC Section 701.5 thereby meeting the requirement.

b. ASCMRC Subchapter J, Bond and insurance requirements for surface coal mining and reclamation operations. Arkansas proposed at subchapter J, to strike all existing language from Part 800, General requirements for bonding of surface coal mining and reclamation operations; to remove Part 805, Amount and duration of performance bond; to remove Part 806, Forms, conditions, and terms of performance bonds and liability insurance; to remove Part 807, Procedures, criteria and schedule for release of performance bond; to remove Part 808, Performance bond forfeiture criteria and procedures; and to consolidate the provisions of the removed Parts into amended Part 800. The language in amended Part 800 is substantively identical to 30 CFR Part 800, Bond and insurance requirements for surface coal mining and reclamation

operations under regulatory programs, with the exception of ASCMRC 800.40(b)(1) through (b)(3). At ASCMRC 800.40(b)(1) and (b)(2), Arkansas proposed to recodify previously approved State language regarding inspections and evaluations or reclamation work by the Arkansas Reclamation Review Committee that was formerly codified at now-removed ASCMRC 807.11(d)(1) and (d)(2). Arkansas also proposed to recodifying at ASCMRC 800.40(b)(3), previously approved State language that requires the Reclamation Review Committee to consider comments received from the Committee and other persons when evaluating reclamation work. This previously approved language was formerly codified at now-removed ASCMRC 807.11(e)(1)(D).

The Director is approving Arkansas' proposal because it is no less effective than the Federal regulations at 30 CFR Part 800 and because it contains previously approved language.

c. ASCMRC 816.46(b)(2), Hydrologic balance: siltation structures, general requirements. Arkansas proposed to add an editorial note that this paragraph is suspended. This is consistent with the editorial note located at the end of 30 CFR 816.46. Therefore, the Director is approving the addition of the editorial note.

d. ASCMRC 816.49, impoundments. Arkansas proposed to amend this section by redesignating existing paragraphs (a)(1) through (a)(8) as paragraphs (a)(2) through (a)(9), respectively; by redesignating existing paragraphs (a)(9) through (a)(11) as paragraphs (a)(11) through (a)(13), respectively; and by adding new paragraphs (a)(1) and (a)(10). In new paragraph (a)(1), Arkansas proposed to add language that is substantively identical to 30 CFR 816.49(a)(1) that pertains to impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985). Language proposed in new paragraph (a)(10) is substantively identical to 30 CFR 816.49(a)(10) and pertains to the location of any remaining highwall in an impoundment. Arkansas also proposed to revise newly redesignated paragraphs (a)(2), (a)(4), (a)(5), (a)(6)(i), (a)(9), and (a)(12), and existing paragraphs (c)(2), (c)(2)(i), and (c)(2)(ii) by inserting references to the Soil Conservation Service criteria for dam classifications. In addition, Arkansas proposed to revise newly redesignated paragraph (a)(9) pertaining to spillways by replacing the existing language with language that is substantively identical to 30 CFR 816.49(a)(9).

The Director is approving these revisions because they are substantively the same as and are no less effective than the Federal regulations at 30 CFR 816.49. The Director notes that the word "highway" in paragraph (a)(10) should be "highwall," and he is requiring Arkansas to correct this spelling error before the final rule is promulgated.

e. *ASCMRC 816.121-U, subsidence control: general requirements.* Arkansas proposed to amend this section by deleting the existing language in ASCMRC 816.121-U; by deleting sections ASCMRC 816.124-U and ASCMRC 816.126-U; and by combining the provisions of ASCMRC 816.121-U, ASCMRC 816.124-U, and ASCMRC 816.126-U into revised section ASCMRC 816.121-U.

The Director is approving this revision because the revised section ASCMRC 816.121-U is substantively the same as and is no less effective than the Federal regulations at 30 CFR 817.121, Subsidence control.

2. *Deletions of Existing Regulations*

Arkansas' proposed deletions of the following regulations are consistent with OSM's repeal of the Federal counterpart regulations shown in brackets:

a. *ASCMRC 779.13 and 783.13, Description of hydrology and geology: General requirements* [30 CFR 779.13 and 783.13, 48 FR 43956, September 26, 1983]; *ASCMRC 779.15 and 783.15, Groundwater information* [30 CFR 779.15 and 783.15, 48 FR 43956, September 26, 1983]; *ASCMRC 779.16 and 783.16, Surface water information* [30 CFR 779.16 and 783.16, 48 FR 43956, September 26, 1983]; *ASCMRC 779.17 and 783.17, Alternative water supply information* [30 CFR 779.17 and 783.17, 48 FR 43956, September 26, 1983]; *ASCMRC 779.20 and 783.20, Fish and wildlife resources information* [30 CFR 779.20 and 783.20, 52 FR 47352, December 11, 1987]; *ASCMRC 779.22 and 783.22, Land use information* [30 CFR 779.22 and 783.22, 59 FR 27932, May 27, 1994]; *ASCMRC 779.25(k), Surface coal mining application requirements for premining land use information* [30 CFR 779.25(a)(11), 59 FR 27932, May 27, 1994]; *ASCMRC 816.82, Coal processing waste banks: Site inspection* [30 CFR 816.82, 48 FR 44006, September 26, 1983]; *ASCMRC 816.85, Coal processing waste banks: Construction requirements* [30 CFR 816.85, 48 FR 44006, September 26, 1983]; *ASCMRC 816.86, Coal processing waste: Burning* [30 CFR 816.86, 48 FR 44006, September 26, 1983]; *ASCMRC 816.88, Coal processing waste: Return to underground workings* [30 CFR 816.88,

48 FR 44006, September 26, 1983]; *ASCMRC 816.89, Disposal of noncoal mine wastes* [30 CFR 816.89, 56 FR 65623, December 17, 1991]; *ASCMRC 816.91, Coal processing waste: Dams and embankments: General requirements* [30 CFR 816.91, 48 FR 44006, September 26, 1983]; *ASCMRC 816.92, Coal processing waste: Dams and embankments: Site preparation* [30 CFR 816.92, 48 FR 44006, September 26, 1983]; *ASCMRC 816.93, Coal processing waste: Dams and embankments: Design and construction* [30 CFR 816.93, 48 FR 44006, September 26, 1983]; *ASCMRC 816.112, Revegetation: Use of introduced species* [30 CFR 816.112, 48 FR 40141, September 2, 1983]; *ASCMRC 816.124-U, Subsidence control: Surface owner protection* [30 CFR 817.124, 48 FR 14638, June 1, 1983]; and *ASCMRC 816.126-U, Subsidence control: Buffer zones* [30 CFR 817.126, 48 FR 14638, June 1, 1983].

Because the above proposed deletions are consistent with OSM's repeal of the Federal counterpart regulations, the Director finds that the proposed deletions will not render the Arkansas regulations less effective than the Federal regulations.

b. *ASCMRC 795.16, data requirements.* Arkansas proposed to remove this section from its regulations and to combine its provisions with ASCMRC 795.12, Program services and data requirements. The Director is approving this revision because the provisions that were combined with ASCMRC 795.12 are substantively identical to 30 CFR 795.9, Program services and data requirements, and will not render the Arkansas regulations less effective than the Federal regulations.

B. *Revisions to Arkansas's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations*

1. *ASCMRC 771.25 Permit Fees*

The currently approved State regulation at ASCMRC 771.25 provides for the administration and enforcement fee to be equal to \$500.00 or \$30.00 per acre, whichever is greater, for all areas which will be affected during a 12-month period. Arkansas proposed to amend this section by replacing the current method of determining the annual administration and enforcement fee with one that charges a flat fee of \$600.00 per year through the life of the permit. Arkansas also proposed to allow the fee to be paid in two equal installments of \$300.00 each if the applicant chooses.

The Director finds that Arkansas' proposal regarding a fee structure and

the payment methods for the annual administration and enforcement fee are no less effective than the Federal regulation at 30 CFR 777.17, Permit fees, which allows application fees to be determined by the regulatory authority and to be paid over the term of the permit. The Director is approving this proposal.

2. *ASCMRC 784.14 Hydrologic Information*

Arkansas proposed to rename the heading to this section and add references to sections 780.21(e), 780.21(f)(3)(iii), and 780.21(f)(3)(v). Also, through an apparent typographical error, the heading for section 784.15 had been deleted making it appear that section 784.14 also referenced section 780.23. Moreover, the reference to ASCMRC 780.23 incorrectly excluded ASCMRC 780.23(a)(2) from consideration for underground mining operations. Arkansas proposed to correct this error by removing the reference to section 780.23.

The proposed changes are consistent with Federal regulations at 30 CFR 784.14, Hydrologic information, and will not render the Arkansas program less effective than the Federal regulations. Therefore, the Director is approving the changes.

3. *ASCMRC 784.15 Reclamation Plan: Postmining Land Uses*

As discussed above, the heading for ASCMRC 784.15 had been deleted. Arkansas proposed to reinsert the correct heading, "Reclamation Plan: Postmining Land Uses," for ASCMRC 784.15 and to add a reference to ASCMRC 780.23 under this heading.

The proposed changes are consistent with Federal regulations at 30 CFR 784.15, Reclamation plan: Land use information, and will not render the Arkansas regulations less effective than the Federal regulations. Therefore, the Director is approving the proposal.

4. *ASCMRC 784.16 Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments*

Arkansas proposed to amend the heading for this section by replacing the term "Ponds" with the term "Siltation Structures."

The proposed change is consistent with the Federal regulations at 30 CFR 784.16, Reclamation plan: Siltation structures, impoundments, banks, dams, and embankments. The Director is approving the revision.

5. ASCMRC 816.116(c)(2)–(c)(3) Revegetation: Standards for Success

Arkansas proposed to amend ASCMRC 816.116(c)(2) by deleting the precipitation qualifier of “more than 26 inches of annual average precipitation”; by deleting paragraph (c)(3) which is applicable to lands that receive less than 26 inches of annual average precipitation; and by redesignating paragraph (c)(4) as (c)(3).

The Director finds that the proposed revisions at paragraph (c) will not make the Arkansas regulations less effective than the Federal regulations at 30 CFR 816.116(c) and is approving them because: (1) Arkansas experiences more than 26 inches of annual average precipitation throughout the State, so the qualifier in paragraph (c)(2) is unnecessary; (2) the State does not experience less than 26 inches of annual average precipitation so paragraph (c)(3) is not applicable for lands in Arkansas; and (3) with the removal of paragraph (c)(3), the redesignation of existing paragraph (c)(4) as new paragraph (c)(3) is acceptable.

C. Revisions to Arkansas's Regulations With No Corresponding Federal Regulations

1. ASCMRC 816.81(c)(3) and (c)(4), Coal Mine Waste: General Requirements

Arkansas proposed to delete paragraphs (c)(3) and (c)(4) from its regulations. The Director is approving this deletion because these paragraphs contain provisions for which there are no counterpart Federal regulations at 30 CFR 816.81, Coal mine waste: General requirements, and because the deletion of these paragraphs will not render the Arkansas regulations less effective than the above Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Arkansas program. OSM received two comments which were from the Department of Army, U.S. Army Corps of Engineers, Engineering Division (Administrative Record Nos. AR–557.05 and AR–

557.13). The comments were in response to the original and reopened Federal Register notices for the proposed rule. This agency responded in both comments that the changes in the State's program were satisfactory.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7410 *et seq.*).

None of the revisions that Arkansas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. AR–557.01). EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. AR–557.01). Neither the SHPO nor the ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Arkansas on April 2, 1996, as revised on December 9, 1996 (Administrative Record No. AR–557.06, January 7, 1997 (Administrative Record No. AR–557.08), and February 19, 1997 (Administrative Record No. AR–557.12).

The Director approves the rules as proposed by Arkansas with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

As discussed in finding number A.1.d., the Director is requiring Arkansas to correct the aforementioned spelling error before the State promulgates the final rule.

The Director is also taking this opportunity to revise 30 CFR 904.10 and 904.20.

The Federal regulations at 30 CFR Part 904, codifying decisions concerning the Arkansas program, are being amended to implement this decision.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal

which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 8, 1997.

Brent Wahlquist,
Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 904 is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 904.10 is revised to read as follows:

§ 904.10 State regulatory program approval.

(a) The Arkansas regulatory program as submitted on February 18, 1980, and as amended on May 29, 1980, and July 2, 1980, and as clarified on July 29, 1980, August 8, 1980, August 14, 1980, and August 29, 1980, was conditionally approved, effective November 21, 1980. Beginning on that date, the Arkansas Department of Pollution Control and Ecology was deemed the regulatory

authority in Arkansas for all surface coal mining and all Coal exploration operations on non-Federal and non-Indian lands.

(b) The Arkansas regulatory program as amended on September 2, 1980, January 19, 1981, and March 12, 1981, was fully approved, effective January 22, 1982.

(c) Copies of the approved program are available at:

(1) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.

(2) Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219-8913.

3. Section 904.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 904.15 Approval of Arkansas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
April 2, 1996	April 29, 1997	<p style="text-align: center;">* * * * *</p> <p>ASCMRC 700.10(b); 701.5; 771.25(b); 779.13; .15; .16; .17; .20; .22; .25(k); 780.21(f)(3)(v); .23; .25(a)(2) through (f); 783.13; .15; .16; .17; .20; .22; 784.14; .15; .16; .20; 785.25; 786.16(c)(4); .19; 795.12; .13; .16; .17; .19; Parts 800, 805 through 808; 816.41(e); .46(a)(3), (b)(2), (c)(2); .49; .81(a), (c)(2), (3), (4); .82; .85; .86; .88; .89(d); .91; .92; .93; .112; .116(c)(2), (3), (4); .121-U(a), (c) through (g); .122-U; .124-U; .126-U; 827.12(g); 842.11(c)(1) through (4); (d), (e), (f); 842.14.</p>

§ 906.10 [Amended]

4. Section 904.16 is amended by removing and reserving paragraph (a).
5. Section 904.20 is revised to read as follows:

§ 904.20 Approval of Arkansas abandoned mine land reclamation plan.

The Arkansas Reclamation Plan, as submitted on July 7, 1982, is approved, effective May 2, 1983. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.

(b) Arkansas Department of Pollution Control and Ecology, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219-8913.

6. Section 904.25 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 904.25 Approval of Arkansas abandoned mine land reclamation plan amendments.

*	*	*	*	*
Original amendment submission date	Date of final publication	Citation/description		
*	*	*	*	*
April 2, 1996	April 29, 1997	ASCMRC 874.5; .12(a)(4) through (8).		

[FR Doc. 97-10990 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 943**

[SPATS No. TX-030-FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Texas regulatory program (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to the Texas Coal Mining Regulations (TCMR) pertaining to the replacement of water supply where it has been adversely impacted by contamination, diminution, or interruption resulting from surface mining activities. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT: A. Dwight Thomas, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Texas Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated October 21, 1996 (Administrative Record No. TX-629), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a July 8, 1996, letter (Administrative Record No. TX-618) that OSM sent to Texas in accordance with 30 CFR 732.17(c).

OSM announced receipt of the proposed amendment in the November 4, 1996, **Federal Register** (61 FR 56648), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on December 4, 1996. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified a concern relating to the proposed definition of the term "replacement of water supply" at TCMR 701.008(77). Texas had proposed language at TCMR 701.088(77)(a) that appeared to place a restriction on the option for a one-time payment of any operation and maintenance costs of a replacement water delivery system that were in excess of customary and reasonable delivery costs for the premining water supply. The proposed language would have required the permittee and the water supply owner to enter into an agreement prior to commencement of mining operations. The counterpart Federal definition at 30 CFR 701.5 contains no restriction as to when the permittee and the water supply owner may enter into an agreement for the one-time payment option. OSM notified Texas of this concern by letter dated January 8, 1997 (Administrative Record No. TX-629.08).

By letter dated March 5, 1997 (Administrative Record No. TX-619.11), Texas responded to OSM's concern by requesting that its amendment be revised at TCMR 701.008(77)(a) to exclude the proposed phrase "at any time prior to commencement of mining operations."

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. TCMR 701.008(77) Definition of Replacement of Water Supply

Texas' proposed definition of the term "replacement of water supply" requires that protected water supplies contaminated, diminished, or interrupted by coal mining operations be replaced. It provides for replacement of water supplies which are equivalent to the premining quantity and quality on both a temporary and permanent basis. Replacement includes provision of an equivalent water delivery system and compensation for operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply. If agreed to by the water supply owner, a one-time payment based on the present worth of the increased annual operating and maintenance costs for a period of time agreed upon by the water supply owner and the permittee would fulfill the obligation to compensate the owner. The definition allows the water supply owner to waive replacement in circumstances where the water supply is not needed for the current or postmining land uses. If water replacement is waived, the permittee must demonstrate that a suitable alternative water source is available and could be developed if needed.

The Director finds that Texas' proposed definition at TCMR 701.008(77) is substantively identical to the corresponding Federal definition at 30 CFR 701.5. Therefore, Texas' proposed regulation is no less effective than the Federal regulation.

2. TCMR 779.130 Alternative Water Supply Information

Texas proposed to revise its alternative water supply regulation by clarifying the existing requirements and adding the requirement that the application identify the suitability of the alternative water sources for existing premine uses and approved postmine land uses.

The Director finds that the revised regulation at TCMR 779.130 has substantively identical regulatory requirements as the counterpart Federal regulation at 30 CFR 780.21(e). Therefore, it is no less effective than the Federal regulation.

3. TCMR 816.352 Water Rights and Replacement

Texas proposed to replace the word "affected" with the words "adversely impacted" to clarify that the specified water supply to be replaced must have been adversely impacted by contamination, diminution, or interruption proximately resulting from

the surface mining activities. Texas also added a new provision requiring the baseline hydrologic information required in §§ 779.126, 779.130, and 780.146 of its regulations be used to determine the extent of the impact of mining upon ground water and surface water.

The Director finds that the revised regulation at TCMR 816.352 is substantively identical to the counterpart Federal regulation at 30 CFR 816.41(h). Therefore, it is no less effective than the Federal regulation.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

Public Comments

By letter dated November 22, 1996 (Administrative Record No. TX-629.04), Texas Utilities Services, Inc. submitted comments in support of Texas' proposed amendment.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX-629.03).

By letter dated November 22, 1996 (Administrative Record No. TX-629.06), the U.S. Army Corps of Engineers commented that it found the changes to be satisfactory.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. TX-629.01). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. 629.02). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on October 21, 1996, and as revised on March 5, 1997.

The Director approves the regulations as proposed by Texas with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 USC 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal

is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 USC 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 USC 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 USC 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 8, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
October 21, 1996	April 29, 1997	TCMR 701.008(77); 779.130; 816.352.

[FR Doc. 97-10993 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 3**

RIN 2900-A177

Compensation for Certain Undiagnosed Illnesses

AGENCY: Department of Veterans Affairs.
ACTION: Interim rule with request for comments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by Persian Gulf Veterans. This amendment is necessary to expand the period within which such disabilities must become manifest to a compensable degree in order for entitlement for compensation to be established. The intended effect of this amendment is to ensure that veterans with compensable disabilities due to undiagnosed illnesses that may be related to active service in the Southwest Asia theater of operations during the Persian Gulf War may qualify for benefits.

DATES: *Effective date:* November 2, 1994. *Comment date:* Comments must be received by VA on or before June 30, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A177." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7230.

SUPPLEMENTARY INFORMATION: In response to the needs and concerns of Persian Gulf veterans, Congress enacted the "Persian Gulf War Veterans' Benefits Act," Title I of the "Veterans' Benefits Improvements Act of 1994," Pub. L. 103-446. That statute added a new section 1117 to Title 38, United States Code, authorizing the Secretary of Veterans Affairs to compensate any Persian Gulf veteran suffering from chronic disability resulting from an undiagnosed illness or combination of undiagnosed illnesses that became manifest either during active duty in the Southwest Asia theater of operations during the Persian Gulf War or to a degree of ten percent or more within a presumptive period, as determined by the Secretary, following service in the Southwest Asia theater of operations during the Persian Gulf War. The statute specified that in establishing a presumptive period the Secretary should review any credible scientific or medical evidence, the historical treatment afforded other diseases for which service connection is presumed, and other pertinent circumstances regarding the experience of Persian Gulf veterans.

In the **Federal Register** of February 3, 1995, VA published a final rule adding a new § 3.317 to title 38, Code of Federal Regulations, to establish the regulatory framework necessary for the Secretary to pay compensation under the authority granted by the Persian Gulf War Veterans' Benefits Act (See 60 FR 6660-6666). As part of that rulemaking, having determined that there was little or no scientific or medical evidence at that time that would be useful in determining an appropriate presumptive period, VA established a two-year-post-Gulf-service presumptive period based on the historical treatment of disabilities for which manifestation periods had been established and pertinent

circumstances regarding the experiences of Persian Gulf veterans as they were then known.

Because of growing concerns regarding the adequacy of the two-year presumptive period for undiagnosed illnesses, the Secretary recently held a series of veterans' forums nationwide and consulted with members of Congress as well as the leadership of the national veterans' service organizations on the issue of that presumptive period. The Secretary has concluded that the two-year presumptive period is inadequate because: (1) Despite a broad federal research effort, there is insufficient data about the nature and causes of these illnesses to justify limiting the presumptive period to two years; and (2) it prevents VA from compensating certain veterans with disabilities due to undiagnosed conditions that may have resulted from their service in the Persian Gulf War. Based upon the consensus concerning the inadequacy of the current presumptive period and the continuing medical and scientific uncertainty about the nature and causes of these illnesses, the Secretary has determined that the presumptive period should be extended to disabilities due to undiagnosed illnesses that become manifest through the year 2001. By then, it is anticipated, results of ongoing research may shed more light on these issues to guide future policies.

We are making this amendment effective November 2, 1994, the effective date of Title I of Pub. L. 103-446, in order to ensure that all Persian Gulf War veterans suffering from disabilities resulting from undiagnosed illnesses receive the benefits that Congress mandated when it enacted Pub. L. 103-446.

We also are amending the authority citation following 38 CFR 3.317 to cite 38 U.S.C. 1117 rather than the Public Law that added that section to the statute.

We are making this document effective on an emergency basis. We have found good cause for concluding that notice and public procedure

thereon are impracticable, unnecessary, and contrary to the public interest since veterans entitled to compensation must be provided such compensation promptly to help them meet their financial obligations.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This rule has been reviewed under Executive Order 12866 by the Office of Management and Budget.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: March 24, 1997.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.317 [Amended]

2. In § 3.317, paragraph (a)(1)(i) is amended by removing “two years after the date on which the veteran last performed active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War” and adding, in its place, “December 31, 2001”.

3. In § 3.317, the authority citation immediately following paragraph (d)(2) is revised to read as follows:

§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

* * * * *

Authority: 38 U.S.C. 1117.

[FR Doc. 97-11055 Filed 4-28-97; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[VA068-5018a and VA066-5018a; FRL-5815-4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Withdrawal of the Direct Final Rule Approving the Redesignation of the Hampton Roads Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of a direct final rule.

SUMMARY: On March 12, 1997, EPA published a direct final rule approving the Commonwealth of Virginia's request to redesignate the Hampton Roads area from marginal ozone nonattainment to attainment. The direct final rule also approved, as a state implementation plan (SIP) revision, the 10 year maintenance plan and mobile emissions budget developed for the Hampton Roads area and submitted by the Commonwealth. Because EPA received adverse comments on this direct final action within the 30 day public comment period, it is withdrawing the March 12, 1997 direct final rulemaking action pertaining to the Hampton Roads nonattainment area.

DATES: This action is effective April 25, 1997.

FOR FURTHER INFORMATION CONTACT:

Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566-2092. Questions may also be addressed via e-mail, at the following address: Gaffney.Kristeen@epamail.epa.gov [PLEASE note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION: On March 12, 1997, EPA published a direct final rule [62 FR 11337] approving the Commonwealth of Virginia's request to redesignate the Hampton Roads marginal ozone nonattainment area from nonattainment to attainment and the 10 year maintenance plan and mobile emissions budget submitted by the Commonwealth for the Hampton Roads area as revisions to the Virginia SIP. As stated in the March 12, 1997 rulemaking document, EPA's action to approve the redesignation was based upon its review of the Commonwealth's submittal and its determination that all five of the Clean Air Act's criteria for redesignation

have been met by and for the Hampton Roads area. The ambient air quality data monitored in the Hampton Roads area indicated that it had attained the National Ambient Air Quality Standard (NAAQS) for ozone for the years 1993-1995. Review of the data monitored in 1996 has indicated continued attainment of the ambient standard. EPA also determined that the Commonwealth had a fully approved Part D SIP for the Hampton Roads area, was fully implementing that SIP, and that the air quality improvement in the Hampton Roads area was due to permanent and enforceable control measures. In the same rulemaking, EPA approved the maintenance plan submitted by the Commonwealth of Virginia as a SIP revision because it provides for maintenance of the ozone standard for 10 years and a mobile emissions budget for the Hampton Roads area.

In its March 12, 1997 rulemaking, EPA stated that if adverse comments were received on the direct final rule within the 30 days of its publication, EPA would publish a document announcing the withdrawal of its direct final rulemaking action. Because EPA received adverse comments on the direct final rulemaking within the prescribed comment period from the Allies in Defense of Cherry Point and U.S. Senator Lauch Faircloth of North Carolina, EPA is withdrawing the March 12, 1997 final rulemaking action pertaining to the Hampton Roads nonattainment area.

In a companion proposed rulemaking published in the Proposed Rules section of the same **Federal Register**, EPA stated that if adverse comments were received on the direct final action within 30 days of its publication, it would withdraw the direct final rule. In their letter submitting adverse comments, the Allies in Defense of Cherry Point also indicated that they intended to submit additional adverse comments and requested that the comment period be extended.

In a subsequent rulemaking document, EPA will reopen the comment period on the March 12, 1997 proposed rule.

In determining its final action on the Commonwealth's redesignation request and maintenance plan for the Hampton Roads area, EPA shall consider all comments received on its March 12, 1997 proposed action.

Dated: April 14, 1997.

William T. Wisniewski,
Acting Regional Administrator, Region III.

Therefore the amendments to 40 CFR parts 52 and 81 which added

§§ 52.2420(c)(117) and 52.2424 and the amendment to the table in § 81.347 are withdrawn.

[FR Doc. 97-11123 Filed 4-25-97; 11:54 pm]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB-112-F]

Medicaid Program; Third Party Liability (TPL) Cost-Effectiveness Waivers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendment.

SUMMARY: This document makes technical corrections to final regulations published on July 10, 1995, at 60 FR 35498, concerning Medicaid agencies' actions where third party liability (TPL) may exist for expenditures for medical assistance covered under the State plan.

EFFECTIVE DATE: These amendments are effective as of September 8, 1995, the effective date of the final rule that contained the errors.

FOR FURTHER INFORMATION CONTACT: Deborah Helms, (410) 786-7132.

SUPPLEMENTARY INFORMATION: Final regulations published on July 10, 1995, at 60 FR 35498 amended 42 CFR part 433 to revise Medicaid regulations concerning Medicaid agencies' actions where third party liability (TPL) may exist for expenditures for medical assistance covered under the State plan. The regulations allow Medicaid agencies to request waivers from certain procedures in regulations that are not expressly required by the Social Security Act. In the regulations, we unintentionally deleted the entire text of § 433.139(b)(3) through an error in our amendatory language and presentation of the CFR text. Consequently, we need to restore the deleted text in § 433.139(b)(3). This document corrects the error by amending § 433.139, to reinstate the deleted language.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433 is corrected by making the following correcting amendments:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for Part 433 continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1903(w), 1912, and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396a(t), 1396b(a)(3), 1396b(d)(2), 1396a(d)(5), 1396b(i), 1396b(o), 1396b(p), 1396b(r), 1396b(w), and 1396k.

2. Section 433.139 is amended by adding paragraph (b)(3) to read as follows:

§ 433.139 Payment of claims.

* * * * *

(b) *Probable liability is established at the time claim is filed.* * * *

(3) The agency must pay the full amount allowed under the agency's payment schedule for the claim and seek reimbursement from any liable third party to the limit of legal liability (and for purposes of paragraph (b)(3)(ii) of this section, from a third party, if the third party liability is derived from an absent parent whose obligation to pay support is being enforced by the State title IV-D agency), consistent with paragraph (f) of this section if—

(i) The claim is prenatal care for pregnant women, or preventive pediatric services (including early and periodic screening, diagnosis and treatment services provided for under part 441, subpart B of this chapter), that is covered under the State plan; or

(ii) The claim is for a service covered under the State plan that is provided to an individual on whose behalf child support enforcement is being carried out by the State title IV-D agency. The agency prior to making any payment under this section must assure that the following requirements are met:

(A) The State plan specifies whether or not providers are required to bill the third party.

(B) The provider certifies that before billing Medicaid, if the provider has billed a third party, the provider has waited 30 days from the date of the service and has not received payment from the third party.

(C) The State plan specifies the method used in determining the provider's compliance with the billing requirements.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Programs)

Dated: April 17, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97-11023 Filed 4-28-97; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1004

RIN 0991-AA86

Health Care Programs: Fraud and Abuse; Revised PRO Sanctions for Failing To Meet Statutory Obligations

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule addresses revised procedures governing the imposition and adjudication of program sanctions, based on recommendations from State utilization and quality control peer review organizations (PROs), resulting from enactment of sections 214 and 231(f) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. **EFFECTIVE DATE:** These regulations are effective on April 29, 1997.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Counsel to the Inspector General, (202) 619-0089.

SUPPLEMENTARY INFORMATION:

I. Background

The PRO Sanctions Process

Section 1156 of the Social Security Act imposes specific statutory obligations on health care practitioners and other persons to furnish medically necessary services to Medicare and State health care program beneficiaries that meet professionally recognized standards of health care. The statute authorizes the Secretary—based on a PRO's recommendation—to impose sanctions on those who fail to comply with these statutory obligations.

Under the PRO sanctions process as originally established, no practitioner or other person was subject to a program exclusion or a momentary penalty until the practitioner or other person had received notice of the proposed sanction and had an opportunity to respond, including a discussion with the PRO. After the receipt of a recommendation from a PRO, the OIG, delegated the Secretary's authority, was authorized to impose an exclusion or a monetary penalty after a careful review of all

relevant documentation and upon making the determination that the practitioner or other person (1) Violated the statutory obligations to render medically necessary and appropriate care or failed to provide evidence of medical necessity and quality, and (2) was unwilling or unable to comply with these obligations. A practitioner or other person excluded from Medicare and any State health care program, or assessed a monetary penalty, on the basis of a PRO recommendation, was entitled to administrative and judicial review after such sanction was imposed.

Recent Revisions to the OIG PRO Sanction Regulations

As a result of various statutory changes to section 1156 of the Social Security Act resulting from section 6 of Public Law 100-93 (the Medicare and Medicaid Patient and Program Protection Act), section 4095 of Public Law 100-203 (the Omnibus Budget Reconciliation Act (OBRA) of 1987), section 4205 of Public Law 101-508 (OBRA of 1990) and section 156 Public Law 103-432 (the Social Security Amendments of 1994), on December 12, 1995 the OIG published final regulations (60 FR 63634) that set forth a comprehensive revision of 42 CFR part 1004, the regulations that govern the imposition and adjudication of sanctions against practitioners and other persons resulting from a PRO recommendation.

Among other revisions, the regulations (1) Eliminated the procedural distinction between "substantial" violations and "gross and flagrant" violations, (2) provided that any violations of the obligations identified during a corrective action plan would be used to support a PRO's recommendation regarding unwillingness or inability, and (3) allowed the OIG to consider any prior problems that a practitioner or other person had with any State health care program as a factor in determining an appropriate exclusion. In addition, the regulations also provided practitioners and other persons with the option of informing their patients directly of a sanction taken against them as an alternative to the current approach of published public notification by the OIG.

The Health Insurance Portability and Accountability Act of 1996

Sections 214 and 231(f) of HIPAA set forth a number of changes to section 1156 of the Act with regard to sanctioning practitioners and other persons for their failure to comply with statutory obligations.

1. Monetary Penalty

Prior to the enactment of HIPAA, section 1156(b)(3) of the Social Security Act authorized the imposition of a monetary penalty on a practitioner or other person as an alternative to exclusion from participation in the Medicare and State health care programs when it was determined, based on a PRO recommendation, that medically improper or unnecessary services were either provided or ordered. The penalty amount was not to be more than the "actual or estimated cost of the medically improper or unnecessary services so provided" (section 1156(b)(3) of the Act). The authority to impose a monetary penalty in lieu of exclusion from participation in Medicare and State health care programs was enacted prior to the establishment of the Medicare prospective payment system for hospitals, and it was often difficult to determine the "actual or estimated cost" of substandard or unnecessary services for purposes of imposing a monetary penalty. Further, the amount of such a penalty was frequently very small and therefore had little deterrent value. The penalty amount was also usually disproportionately small compared to the Government's costs in processing such a case.

Under section 231(f) of HIPAA, the penalty sanction amount against practitioners and other persons who fail to comply with the statutory obligations has now been changed from "the actual or estimated cost" to "up to \$10,000 for each instance of medically improper or unnecessary services provided."

2. Determination of Unwillingness or Inability

Prior to the enactment of HIPAA, section 1156(b)(1) of the Social Security Act authorized the sanctioning of a practitioner or other person who was found, based on a PRO recommendation, to have violated certain statutory violations and was determined to "have demonstrated an unwillingness or a lack of ability substantially to comply with such obligations." This provision created unnecessary obstacles to the sanctioning of practitioners and other persons who had failed to comply with the statutory obligations since it was often difficult to assess evidence on the separate issue of unwillingness or inability.

In accordance with section 214(b) of HIPAA, section 1156 of the Act has been now amended to state that in making a determination on whether to sanction a practitioner or other person for failure to comply with statutory obligations

relating to quality and medical necessity of health care services, the Secretary will no longer be required to prove that the practitioner or other person was either unwilling or unable to comply with such obligations.

3. Minimum Exclusion Period

Section 1128 of the Social Security Act authorizes the Secretary to impose mandatory and permissive exclusions of individuals and entities from participation in the Medical and State health care programs. In the case of mandatory exclusions, minimum periods of exclusion are set forth. Section 1156 of the Act set forth no specified minimum period of exclusion from the programs.

Section 214(a) of HIPAA now mandates that the Secretary impose a minimum 1 year period of exclusion for all practitioners and other persons who fail to meet statutory obligations under section 1156 of the Act.

II. Revisions to 42 CFR Part 1004

As a result of Public Law 104-191, we are making a number of technical revisions to the OIG's PRO sanction regulations at 42 CFR part 1004, specifically amending §§ 1004.20, 1004.80, 1004.100 and 1004.110. The changes to § 1004.20, Sanctions, reflect the establishment of the 1 year minimum exclusion period and the revised monetary penalty amount. Sections 1004.80(b)(8) (regarding the corrective action plan contents), 1004.80(c)(6) (regarding the PRO report recommendations to the OIG), 1004.100(b)(3) (OIG review of the PRO report), and 1004.100(d)(7) (regarding the OIG's decision to sanction) are either being revised or deleted to address the deletion from the statute of the unwillingness and inability requirement.

An additional technical revision is also being made to §§ 1004.110 (d)(1)(i) and (d)(2)(i) with regard to public notice of a sanction. While the public notice of sanction will continue to identify the sanctioned practitioner or other person, the finding that the obligation has been violated, and the effective date of the sanction, we are deleting the word "duration" from these paragraphs. The duration of an exclusion is dependent upon the reinstatement of the practitioner or other person, which is not automatic and therefore not known in advance. This change is consistent with the content of public notices for exclusions under 42 CFR part 1001 that are currently published in the **Federal Register**.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports, for the most part, with the statutory requirements set forth in Public Law 104-191, with no issues of policy discretion. Accordingly, we believe that opportunity for prior comment is unnecessary and contrary to the public interest, and are issuing these revised regulations as a final rule that will apply to all future cases under this authority.

IV. Regulatory Impact Statement

As indicated above, the provisions contained in this final rulemaking set forth technical revisions to the OIG PRO sanctions process in compliance with statutory changes resulting from the Health Insurance Portability and Accountability Act of 1996. The great majority of individuals, organizations and entities addressed through these regulations do not engage in such prohibited activities and practices, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statute. As such, the changes contained in this final rule should have no effect on Federal or State expenditures. The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866.

Regulatory Flexibility Act

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601-612), unless we certify that a regulation will not have a significant economic impact on a substantial number of small business entities. While some penalties may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG, and the aggregate

economic impact of this rulemaking on small business entities should be minimal, affecting only those few who have chosen to engage in prohibited arrangements and schemes in violation of statutory intent. Therefore, we have concluded and certify, that this final rule will not have a significant economic impact on a substantial number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

Paperwork Reduction Act

Sections 1004.80 and 1004.110 of this rulemaking contain information collection requirements that require approval by OMB. We are required to solicit public comments under section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. Specifically, we are inviting comments on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on practitioners and other persons, including through the use of automated collection techniques or other forms of information technology.

Title: PRO Sanction Process.

Summary of the collection of information: In conjunction with section 1156(b)(1) of the Social Security Act, § 1004.80 requires the PRO to submit a report and recommendation to the OIG if the violation(s) identified by the PRO have not been resolved. The report must include the following information—

- Identification of the practitioner or other person, and when applicable, the name of the director, administrator or owner of the entity involved;
- The type of health care services involved;
- A description of each failure to comply with an obligation;
- Pertinent documentary evidence;
- Copies of written correspondence and, if applicable, a copy of the verbatim transcript of the meeting with the practitioner or other person;
- The PRO's finding that an obligation has been violated and that the violation is substantial and has occurred in a substantial number of cases or is gross and flagrant;
- A case-by-case analysis and evaluation of any additional information provided by the practitioner or other person in response to the PRO's initial finding;

- A copy of the correction action plan that was developed and documentation of the results of such plan;

- The number of admissions by the practitioner or other person reviewed by the PRO during the period in which the violations(s) were identified;

- The professional qualifications of the PRO's reviewers; and

- The PRO's sanction recommendations.

The PRO must specify in its report the amount of monetary penalty and period of exclusion recommended, the availability of alternative sources in the community along with supporting information, and the county (or counties) in which the practitioner or other person furnishes services.

Section 1004.110 of these regulations set forth an alternative sanctions notification process that allows sanctioned practitioners or other persons the option of informing all their patients directly of the sanction action taken against them. If they select this option and comply with its requirements in a timely fashion, sanctioned practitioners and other persons will be exempted from the requirement of public notice. Practitioners or other persons are required to certify to the Department that they have taken action to inform all their patients of the sanction and, in the case of exclusion, that they will notify new patients before furnishing services. Each sanctioned practitioner or other person opting for this alternative notice procedure must alert both existing patients and all new patients through written notification based on a suggested, non-mandatory model provided by the OIG. The model patient notification letter indicates the effective date of the exclusion, the programs from which the practitioner or other person has been excluded, and the period of time for that exclusion. A copy of this model notification letter is available from the OIG upon request.

Respondents: The "respondents" for the collection of information described in § 1004.80 are the individual PROs recommending a sanction action. The "respondents" under § 1004.110 are those practitioners or other persons who have been sanctioned under section 1156 of the Act and who opt for the alternative notice procedure through written notification to their patients.

Estimated number of respondents: Over the last several years, the OIG has received less than ten PRO sanction recommendations for action. We believe that the number of PRO sanction cases and requests for the alternative notification process will remain low.

Estimated number of responses per respondent: 1

Estimated total annual burden on respondents: We believe that the burden on PROs of preparing the report to the OIG will vary widely because of the differences in the scope and type of information included and the complexity of the circumstances that have led to the PRO recommendation. We estimate that the average burden for each submitted report to the OIG will be in the range from 2 to 10 hours. We further believe that the burden for most PROs will be closer to the lower end of the range, with an average of 4 hours per respondent. The total burden for this information collection is estimated to be 28 hours.

In addition, we estimate that the alternative notification procedure selected by sanctioned practitioners or other persons will be minimal, averaging from 1 to 2 hours per respondent. Total burden for this activity is estimated not to exceed 10 hours.

Comments on these information collection activities should be sent to both:

Cynthia Agens Bauer, OS Reports Clearance Officer, ASMB Budget Office, Room 503-H Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, FAX: (202) 690-6352;

Allison Herron Eydt, OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20053, FAX: (202) 395-6974.

Comments on these paperwork reduction requirements should be submitted to the above individuals within 30 days following the **Federal Register** publication of this final rule. The information collection requirements will not be in effect until approval by OMB. Public notice will be provided when OMB approval is obtained.

List of Subjects in 42 CFR Part 1004

Administrative practice and procedure, Health facilities, Health professions, Medicare, Peer Review Organizations, Penalties, Reporting and recordkeeping requirements.

Accordingly, 42 CFR part 1004 is amended as set forth below:

PART 1004—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES BY A PEER REVIEW ORGANIZATION

1. The authority citation for part 1004 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1320c-5.

2. Section 1004.20 is revised to read as follows:

§ 1004.20 Sanctions.

In addition to any other sanction provided under the law, a practitioner or other person may be—

(a) Excluded from participating in programs under titles V, XVIII, XIX, and XX of the Social Security Act for a period of no less than 1 year; or

(b) In lieu of exclusion and as a condition for continued participation in titles V, XVIII, XIX, and XX of the Act, if the violation involved the provision or ordering of health care services (or services furnished at the medical direction or on the prescription of a physician) that were medically improper or unnecessary, required to pay an amount of up to \$10,000 for each instance in which improper or unnecessary services were furnished or ordered (or prescribed, if appropriate). The practitioner or other person will be required either to pay the monetary assessment within 6 months of the date of notice or have it deducted from any sums the Federal Government owes the practitioner or other person.

3. Section 1004.80 is amended by republishing the introductory text of paragraphs (b) and (c), revising paragraphs (b)(8), (c)(4), and (c)(5), and removing paragraph (c)(6) to read as follows:

§ 1004.80 PRO report to the OIG.

* * * * *

(b) *Content of report.* The PRO report must include the following information—

* * * * *

(8) A copy of the CAP that was developed and documentation of the results of such plan;

* * * * *

(c) *PRO recommendation.* The PRO must specify in its report—

* * * * *

(4) The availability of alternative sources of services in the community, with supporting information; and

(5) The county or counties in which the practitioner or other person furnishes services.

4. Section 1004.100 is amended by republishing the introductory text of paragraph (d), revising paragraphs (b), (d)(6), and (d)(7), and removing paragraph (d)(8) to read as follows:

§ 1004.100 Acknowledgement and review of report.

* * * * *

(b) *Review.* The OIG will review the PRO report and recommendation to determine whether—

(1) The PRO has followed the regulatory requirements of this part; and
(2) A violation has occurred.

* * * * *

(d) *Decision to sanction.* If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

* * * * *

(6) Any prior problems the Medicare or State health care programs have had with the practitioner or other person; and

(7) Any other matters relevant to the particular case.

* * * * *

5. Section 1004.110 is amended by revising paragraphs (d)(1)(i) and (d)(2) to read as follows:

§ 1004.110 Notice of sanction.

* * * * *

(d) *Patient notification.* (1)(i) The OIG will provide a sanctioned practitioner or other person an opportunity to elect to inform each of their patients of the sanction action. In order to elect this option, the sanctioned practitioner or other person must, within 30 calendar days from receipt of the OIG notice, inform both new and existing patients through written notice—based on a suggested (non-mandatory) model provided to the sanctioned individual by the OIG—of the sanction and, in the case of an exclusion, its effective date. Receipt of the OIG notice is presumed to be 5 days after the date of the notice, unless there is a reasonable showing to the contrary. Within this same period, the practitioner or other person must also sign and return the certification that the OIG will provide with the notice. For purposes of this section, the term “all existing patients” includes all patients currently under active treatment with the practitioner or other person, as well as all patients who have been treated by the practitioner or other person within the last 3 years. In addition, the practitioner or other person must notify all prospective patients orally at the time such persons request an appointment. If the sanctioned party is a hospital, it must notify all physicians who have privileges at the hospital, and must post a notice in its emergency room, business office and in all affiliated entities regarding the exclusion. In addition, for purposes of this section, the term “in all affiliated entities” encompasses all entities and properties in which the hospital has a direct or indirect ownership interest of 5 percent or more and any management, partnership or control of the entity.

* * * * *

(2) If the sanctioned practitioner or other person does not inform his, her or its patients *and* does not return the required certification within the 30-day period, or if the sanctioned practitioner or other person returns the certification within the 30-day period but the OIG obtains reliable evidence that such person nevertheless has not adequately informed new and existing patients of the sanction, the OIG—

(i) Will see that the public is notified directly of the identity of the sanctioned practitioner or other person, the finding that the obligation has been violated, and the effective date of any exclusion; and

(ii) May consider this failure to adhere to the certification obligation as an adverse factor at the time the sanctioned practitioner or other person requests reinstatement.

* * * * *

Dated: December 12, 1996.

June Gibbs Brown,

Inspector General, Department of Health and Human Services.

Approved: December 27, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 97-11024 Filed 4-28-97; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Executive Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are

made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Jersey: Middlesex (FEMA Docket No. 7197).	Borough of South River.	September 9, 1996, September 16, 1996, The Home News & Tribune.	The Honorable Thomas J. Toto, Mayor of the Borough of South River, 64-66 Main Street, South River, New Jersey 08882.	March 3, 1997.	340280 C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 16, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97-11000 Filed 4-28-97; 8:45 am]

BILLING CODE 6718-03-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7221]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson	Unincorporated Areas.	Mar. 5, 1997, Mar. 12, 1997, <i>Birmingham Post-Herald</i> .	Ms. Mary M. Buckelew, President of the Jefferson County Board of Commissioners, 716 North 21st Street, Birmingham, Alabama 35263.	Feb. 26, 1997	010217 B
Georgia: DeKalb ...	Unincorporated Areas.	Mar. 20, 1997, Mar. 27, 1997, <i>Decatur-DeKalb News/Era</i> .	Ms. Liane Levetan, DeKalb County Chief Executive Officer, 1300 Commerce Drive, Decatur, Georgia 30030.	June 25, 1997	130065 F
Illinois: Cook	Village of Schaumburg.	Apr. 7, 1997, Apr. 14, 1997, <i>Daily Herald</i> .	The Honorable Al Larson, Mayor of the Village of Schaumburg, 101 Schaumburg Court, Schaumburg, Illinois 60193-1899.	Mar. 26, 1997	170158 C
Cook	Unincorporated Areas.	Apr. 1, 1997, Apr. 8, 1997, <i>Chicago Sun-Times</i> .	Mr. John H. Stroger, President of the Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	Mar. 20, 1997	170054 B
Cook and DuPage.	Village of Roselle	Apr. 11, 1997, Apr. 18, 1997, <i>Daily-Herald</i> .	The Honorable Gayle Smolinski, Mayor of the Village of Roselle, 31 South Prospect Street, Roselle, Illinois 60172.	July 17, 1997	170216 B
McHenry	Village of Spring Grove.	Apr. 2, 1997, Apr. 9, 1997, <i>Northwest Herald</i> .	Mr. Robert Martens, Village of Spring Grove President, 7401 Meyer Road, Spring Grove, Illinois 60081.	Mar. 21, 1997	170485 B
Indiana: Marion	City of Indianapolis.	Mar. 21, 1997, Mar. 28, 1997, <i>The Indianapolis Star and News</i> .	The Honorable Stephen Goldsmith, Mayor of the City of Indianapolis, 200 East Washington Street, Indianapolis, Indiana 46204-3357.	Mar. 13, 1997	180159 D
New Hampshire: Hillsborough.	Town of Amherst	Mar. 20, 1997, Mar. 27, 1997, <i>The Telegraph</i> .	Mr. Robert Jackson, Chairman of the Selectmen of the Town of Amherst, P.O. Box 960, Amherst, New Hampshire 03031.	June 25, 1997	330081 B
Ohio: Fairfield and Franklin.	City of Columbus	Mar. 28, 1997, Apr. 4, 1997, <i>The Columbus Dispatch</i> .	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	July 3, 1997	390170 G
Tennessee: Shelby	Unincorporated Areas.	Mar. 3, 1997, Mar. 10, 1997, <i>The Daily News</i> .	Mr. Jim Kelly, Shelby County Chief Administrative Officer, 160 North Main Street, Memphis, Tennessee 38103.	Feb. 26, 1997	470214 E
Virginia: Loudoun	Town of Leesburg	Mar. 19, 1997, Mar. 26, 1997, <i>Loudoun Times-Mirror</i> .	The Honorable James Klem, Mayor of the Town of Leesburg, P.O. Box 88, 25 West Market Street, Leesburg, Virginia 20176.	June 24, 1997	510091 B
Orange	Unincorporated Areas.	Mar. 13, 1997, Mar. 20, 1997, <i>Orange County Review</i> .	Ms. Brenda Bailey, Orange County Administrator, P.O. Box 111, Orange, Virginia 22960.	Sept. 3, 1997	510203 B
Wisconsin: Wash- ington.	Village of German- town.	Mar. 21, 1997, Mar. 28, 1997, <i>Daily News</i> .	Mr. Paul Brandenburg, Village of Germantown Administrator, P.O. Box 337, Germantown, Wisconsin 53022-0337.	Mar. 14, 1997	550472 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 16, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97-10999 Filed 4-28-97; 8:45 am]

BILLING CODE 6718-03-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base

flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained

by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and

maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Cromwell (Town), Middlesex County (FEMA Docket No. 7199)	
<i>Mattabassett River:</i>	
At upstream side of the most downstream crossing of State Route 72	*23
At downstream side of the most upstream crossing of State Route 72	*24
<i>Coles Road Brook:</i>	
At the confluence with Mattabassett River	*23
Just downstream of State Route 72	*24
<i>Willow Brook:</i>	
At the confluence with the Mattabassett River	*23
Approximately 50 feet upstream of State Route 72	*24
FLORIDA	
Broward County (Unincorporated Areas) (FEMA Docket No. 7199)	
<i>Atlantic Ocean:</i>	
Approximately 500 feet east of the intersection of S.E. 19th Street and South Ocean Boulevard	*13
Approximately 100 feet west of intersection of South Ocean Boulevard and Terra Mar Drive	*6
Maps available for inspection at the Department of Natural Resource Protection, Water Resources Division, 218 S.W. 1st Avenue, 2nd Floor, Ft. Lauderdale, Florida.	
Deerfield Beach (City), Broward County (FEMA Docket No. 7199)	
<i>Atlantic Ocean:</i>	
At intersection of N.E. 4th Court and N.E. 21st Avenue	*10
Approximately 100 feet east of the intersection of 21st Avenue and S.E. 9th Street	*13
Maps available for inspection at the Deerfield Beach City Hall, Engineering Department, 150 Northeast 2nd Avenue, Deerfield Beach, Florida.	
Hillsboro Beach (Town), Broward County (FEMA Docket No. 7199)	
<i>Atlantic Ocean:</i>	
Approximately 800 feet east of the intersection of N.E. 31st and N.E. 39th Street	*13
Approximately 800 feet north-east of the intersection of State Route A1A and River-side Drive	*6
Maps available for inspection at the Hillsboro Beach City Hall, 1210 Hillsboro Mile, Hillsboro Beach, Florida.	
KENTUCKY	
Daviess County (Unincorporated Areas) (FEMA Docket 7199)	
<i>Ohio River:</i>	
900 feet upstream of State Route 270 and Highway 60	*387

1995, Public Law 104-13. Public and agency comments are due May 29, 1997; OMB notification of action is due June 30, 1997. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060-0531.

Title: Redesignation of 27.5 GHz Frequency Band, Establishing Rules and Policies for Local Multipoint Distribution (NPRM CC Docket No. 92-297).

Form No.: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit entities.

Number of Respondents: 986.

Estimated Time Per Response: 41 hours.

Total Annual Burden: 30,381.5 hours.

Total Annual Cost: \$2,025,400.

Needs and Uses: The information requested will be used by FCC personnel to determine whether the applicant is qualified legally and technically to be licensed to use the radio spectrum. The original NPRM sought comment on rules governing a substantial number of filings that an estimated 10,000 applicants would make. It was estimated that an average of 8 hours per respondent would be required to comply with the proposed requirements. The *Second Report and Order* revised these requirements and burdens to three specific burdens involving frequency coordination, discontinuance of service, and certification of construction requirements/renewal expendancy for an estimated 986 respondents that would take an average of 41 hours to comply with the rules.

I. Designation and Licensing of Spectrum

A. 31 GHz Band and Number of Licenses

1. The *Second Report and Order* allocates an additional 300 megahertz of spectrum in the 31 GHz band (31.0-31.3) for LMDS. It also adopts the use of Basic Trading Areas (BTAs) for licensing areas. Two licenses, of unequal size, are proposed for each

BTA. The larger license is for 1150 megahertz, 1000 megahertz of which is located in the 28 GHz band (27.5-29.5) and 150 of which is located in the center of the 300 megahertz segment in the 31 GHz band. The smaller license is for a total of 150 megahertz, consisting of 75 megahertz at either end of the 150 megahertz segment in the 31 GHz band allocated to LMDS. Incumbent governmental licensees and private business users presently operating in the 75-megahertz segments of the band encompassed by the smaller, 150 megahertz LMDS license, will be accorded protection from interference from the LMDS operator in that band. (No interference protection will be accorded to incumbents operating on a temporary basis in the 31 GHz band.) The reverse will be the case with the 1150 megahertz LMDS license. The 1150 megahertz LMDS licensee will be accorded protection from interference from all incumbents operating in the center 150 megahertz segment of the 31 GHz band. However, incumbent governmental licensees and private business users in that segment will be permitted to migrate to the 75-megahertz segments encompassed by the smaller LMDS license in order to obtain the protections offered such incumbents in that band, provided they file an application to modify their licenses no later than July 14, 1997.

These applications will not be subject to petitions to deny. Applications for new facilities in the 31 GHz band are frozen.

B. Eligibility

2. LECs and cable companies are barred from owning 1150 megahertz LMDS licenses that are "in-region." Incumbent LECs and cable companies may participate fully in the auction of 1150 MHz licenses, including the auction of in-region licenses, so long as they come into compliance with the restrictions within 90 days by divesting telephone or cable assets, or partitioning the LMDS license. An incumbent will be defined as in-region if its authorized service area represents 10 percent or more of the population of the BTA; a 20 percent or greater ownership level will constitute an attributable interest in a license. These restrictions will terminate on the third anniversary of the close of the auction, unless extended by the Commission. Parties may seek waivers to shorten the restriction period.

C. Buildout and Flexibility of Use

3. LMDS licensees will be subject to liberal construction requirements. LMDS licensees may disaggregate or partition a license at any time, with certain restrictions for licensees taking

advantage of bidding credits or installment payments. (The *Fifth Notice of Proposed Rulemaking* portion of this decision proposes specific provisions regarding partitioning and disaggregation.) Licensees also have the flexibility to choose whether they want to offer common carrier or private carrier services, or both.

D. Petitions for Reconsideration and Pioneer's Preference

4. The Commission has also deferred decision on CellularVision's pioneer's preference request until completion of a peer review of CellularVision's technology, and issues concerning the pioneer's preference license for the portion of the New York Basic Trading Area lying outside of the New York Primary Metropolitan Statistical Area already licensed to CellularVision are pending the outcome of such review process and final disposition of its preference request. Finally, the Order denies the petitions for reconsideration of the Commission's decision to dismiss waiver applications filed by entities seeking a license under *Hye Crest Management, Inc.*

II. Competitive Bidding Rules and Procedures

A. Use of Competitive Bidding

5. The Commission concludes that auctioning LMDS licenses would further the Communications Act's objectives. First, based on its previous experience in conducting auctions for other services, the Commission believes that use of competitive bidding to award LMDS licenses, as compared with other licensing methods, would speed the development and deployment of this new technology, products and services to the public with minimal administrative or judicial delay, and would encourage efficient use of the spectrum as required by Sections 309(j)(3)(A) and 309(j)(3)(D), 47 U.S.C. §§ 309(j)(3)(A) & 309(j)(3)(D). Second, auctions meet the objectives of Section 309(j)(3)(B), 47 U.S.C. § 309(j)(3)(B), because the Commission is adopting competitive bidding rules that foster economic opportunity and the distribution of licenses among a wide variety of applicants, including small businesses.

6. The Commission also has determined that the use of auctions to assign LMDS licenses will advance the goals of 47 U.S.C. § 309(j)(3)(C) by enabling the public to recover a portion of the value of the public spectrum. If the Commission uses a licensing

methodology that ensures that licenses are assigned to those who value them most highly, it follows that such licensees can be expected to make the most efficient and intensive use of the spectrum. Because LMDS is eligible for competitive bidding under the statutory requirements set forth in 47 U.S.C. § 309(j)(2)(A), the Commission is precluded from using lotteries to award LMDS licenses. Accordingly, the Commission rejects the suggestion that the Commission use lotteries to award LMDS licenses.

7. The Commission also declines at this time to set aside LMDS spectrum for educational purposes. While the Commission is not adopting public interest programming obligations at this time, it reserves the right to do so on LMDS providers who provide video services. Licensees are specifically on notice that the Commission may adopt public interest requirements at a later date. If public interest obligations are found to be warranted, one option would be to adopt rules similar to those Congress enacted for Direct Broadcast Satellite providers, including a 4 percent to 7 percent set-aside of capacity for non-commercial educational and informational programming. See 47 U.S.C. § 335. Another option would be to hold LMDS licensees to a "promise *versus* performance" type standard.

B. Competitive Bidding Design for LMDS Licenses

8. Based on the record in this proceeding and its successful experience conducting simultaneous multiple round auctions for other services, the Commission believes a simultaneous multiple round auction is the most appropriate competitive bidding design for LMDS. First, for certain bidders, the value of these licenses will be significantly interdependent because of the desirability of aggregation across geographic regions. Simultaneous multiple round bidding will generate more information about license values during the course of the auction, and provide bidders with more flexibility to pursue back-up strategies, than auctioning licenses separately. Simultaneous multiple round bidding therefore is most likely to award licenses to the bidders who value them the most highly and to provide bidders with the greatest likelihood of obtaining the license combinations that best satisfy their service needs. The Commission currently does not have the operational capability to use combinatorial bidding but will consider doing so in future auctions.

9. The Commission will conduct simultaneous auctions of two licenses in each of 492 BTAs for LMDS, for a total of 984 licenses. Each BTA will have one license consisting of 1,150 megahertz: 1,000 megahertz in the 28 GHz band (27.5–28.35 GHz and 29.1–29.25 GHz) and 150 megahertz in the 31 GHz band (31.075 GHz–31.225 GHz); and a second license consisting of 150 megahertz in the 31 GHz band (31.0–31.075 GHz and 31.225–31.399 GHz) will be auctioned concurrently. The Commission will not include the New York BTA at this time in the licensing process because of the outstanding issues connected with the CellularVision pioneer preference request.

10. The Commission will use the competitive bidding procedures of part 1, subpart Q, for LMDS with modifications as indicated below.

1. Bid Increments and Tie Bids

11. As it has done for previous auctions, the Commission will announce by Public Notice prior to the LMDS auction the general guidelines for bid increments. The Commission retains the discretion to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses. Where a tie bid occurs, the Commission will determine the high bidder by the order in which the Commission received the bids. The Commission retains the discretion to vary both absolute and percentage bid increments for specific licenses.

2. Stopping Rules

12. The Commission will use a simultaneous stopping rule for LMDS. The auction will close after one round passes in which no new valid bids, proactive activity rule waivers, or bid withdrawals are submitted. The Commission will retain the discretion, however, to keep the auction open even if no new valid bids, proactive waivers, or bid withdrawals are submitted. In the event that this discretion is exercised, the effect will be the same as if a bidder had submitted a proactive waiver. This will help ensure that the auction is completed within a reasonable period of time, because it will enable the Commission to utilize larger bid increments, which speed the pace of the auction, without risking premature closing of the auction. Since it also imposes an activity rule, the Commission believes that allowing simultaneous closing for all licenses will afford bidders flexibility to pursue back-up strategies without running the risk that bidders will hold back their bidding until the final rounds. In

addition, the Commission retains the discretion to declare after forty rounds that the auction will end after some specified number of additional rounds. If this option is used, the Commission will only accept bids on licenses where the high bid has increased in at least one of the last three rounds.

3. Duration of Bidding Rounds

13. Because in simultaneous multiple round auctions bidders may need a significant amount of time to evaluate back-up strategies and develop their bidding plans, the Commission reserves the discretion to vary the duration and frequency of bidding rounds. The Commission will announce any changes to the duration of and intervals between bidding either by Public Notice prior to the auction or by announcement during the auction.

4. Bid Withdrawals

14. Because the Commission is awarding two licenses of different size (1,150 megahertz and 150 megahertz) per geographic area, the Commission finds it unnecessary to address the merits of comments predicated on the assumption that the Commission would award two LMDS licenses of equal size. The Commission will not make use of a bid withdrawal period within each round as in previous auctions, but will permit a high bidder to withdraw the high bid from a previous round subject to the bid withdrawal payments discussed below. If a high bid is withdrawn (and not bid upon in the same round), the license will be offered in the next round at the second highest bid price. The Commission may at its discretion adjust the offer price in subsequent rounds until a valid bid is received on the license. In addition, to prevent a bidder from strategically delaying the close of the auction, the Commission retains the discretion to limit the number of times that a bidder may re-bid on a license from which it has withdrawn a high bid.

5. Activity Rules

15. For LMDS auctions, the Commission will use the Milgrom-Wilson activity rule with some variations. Milgrom and Wilson divide the auction into three stages. The Commission will set, by announcement before the auction, the minimum required activity levels for each stage of the auction. The Commission retains the discretion to set and, by announcement before or during the auction, vary the required minimum activity levels (and associated eligibility calculations) for each auction stage. Retaining this flexibility will improve its ability to

control the pace of the auction and help ensure that the auction is completed within a reasonable period of time.

16. For the LMDS auctions, the Commission will use the following transition guidelines: The auction will begin in Stage One and will generally move from Stage One to Stage Two and from Stage Two to Stage Three when the auction activity level is below ten percent for three consecutive rounds. Under no circumstances can the auction revert to an earlier stage. However, the Commission retains the discretion to determine and announce during the course of an auction when, and whether, to move from one auction stage to the next, based on a variety of measures of bidder activity, including, but not limited to, the auction activity level as defined above, the percentage of licenses (measured in terms of bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

17. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, the Commission will provide bidders with a limited number of waivers of the above-described activity rule. The Commission believes that some waiver procedure is needed because the Commission does not wish to reduce a bidder's eligibility due to an accidental act or circumstances not under the bidder's control.

18. The Commission will provide bidders with five activity rule waivers that may be used in any round during the course of the auction. If a bidder's activity is below the required activity level, a waiver will be applied automatically. That is, for example, if a bidder fails to submit a bid in a round, and its activity from any standing high bids (that is, high bids at the end of the previous round) falls below its required activity level, a waiver will be automatically applied. A waiver will preserve current eligibility in the next round. An activity rule waiver applies to an entire round of bidding and not to a particular BTA service area.

19. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid if they intentionally wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility will be permanently reduced, and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no new valid

bids will not keep the auction open. Bidders will have the option of entering a proactive activity rule waiver during any round. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

20. The Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control. The Commission also retains the flexibility to adjust by Public Notice prior to an auction the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction.

C. Procedural and Payment Issues

21. The Commission will generally follow the procedural and payment rules established in subpart Q of part 1 of the Commission's Rules. Any service-specific modifications based on the particular characteristics of LMDS will be set forth by Public Notice by the Wireless Telecommunications Bureau.

1. Upfront Payments

22. The Commission recognizes that for purposes of LMDS the formula of \$0.02 per MHz-pop can yield very high upfront payments given the amount of spectrum offered in each service area. The Commission believes that the concerns of commenters about potentially high payments may be alleviated by lowering the amount per MHz-pop used to calculate the payment. The Commission delegates authority to the Chief, Wireless Telecommunications Bureau, to determine an appropriate calculation for the upfront payment, which the Bureau will announce by Public Notice. In calculating the upfront payment, the Bureau should take into consideration the value of similar spectrum.

2. Down Payments, Long-Form Applications, and Payment in Full

23. The Commission will require all winning bidders in LMDS auctions to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). Winning bidders, except for small businesses and businesses with annual gross revenues between \$40 million and \$75 million, will be required to submit this payment by wire transfer to the Commission's lock-box bank within ten business days following release of a public notice announcing the close of bidding and high bidders. Winning bidders will also be required to file a long-form application within ten business days of

the announcement of the high bidders. If, pursuant to section 309(d) of the Communications Act, the Commission dismisses or denies any and all petitions to deny filed against a long-form application, or if no petitions to deny are filed, the Commission will issue an announcement to this effect, and the winning bidder will then have ten business days to submit the balance of its winning bid, unless it qualifies for an installment payment plan.

3. Bid Withdrawal, Default, and Disqualification Payments

24. For the LMDS auctions, the Commission adopts the bid withdrawal, default and disqualification rules contained in sections 1.2104(g) and 1.2109 of the Commission's Rules. If a license is re-offered by auction, the "winning bid" refers to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay an amount equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the license is offered by the Commission. If a license that is the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the "winning bid" refers to the bid of the highest bidder who accepts the offer. The Commission recently addressed the issue of how its bid withdrawal provisions apply to bids that are mistakenly placed and withdrawn in a decision involving the 900 MHz Specialized Mobile Radio ("SMR") and broadband personal communications services ("PCS") C block auctions. See Atlanta Trunking Associates, Inc. and MAP Wireless L.L.C. Request To Waive Bid Withdrawal Payment Provisions, FCC 96-203, Order (released May 3, 1996) (summarized in 61 FR 25,807 (May 23, 1996)), *recon. pending*.

25. If a bidder has withdrawn a bid or defaulted on one or more licenses but the amount of the withdrawal or default payment cannot yet be determined, the bidder will be required to make a deposit of up to 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the withdrawal or default payment, any excess deposit will be refunded. Upfront payments will be applied to such deposits and to bid withdrawal and default payments due before being applied toward the bidder's down

payment on licenses the bidder has won and seeks to acquire.

26. In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission retains the option to declare the applicant and its principals ineligible to bid in future auctions, or take any other action the Commission deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

D. Regulatory Safeguards

1. Transfer Disclosure

27. The Communications Act directs the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits." 47 U.S.C. § (j)(4)(E). The Commission will adopt the transfer disclosure requirements contained in Section 1.2111(a) of the Commission's Rules, 47 CFR § 1.2111(a), for all LMDS licenses obtained through the competitive bidding process.

2. Anti-Collusion Rules

28. The Commission will apply the anti-collusion rules set forth in Sections 1.2105 and 1.2107 of the Commission's Rules, 47 CFR §§ 1.2105 & 1.2107, to LMDS auctions. In addition, where specific instances of collusion in the competitive bidding process are alleged in petitions to deny, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their down payment or their full bid amount and revocation of their license(s), and they may be prohibited from participating in future auctions.

E. Treatment of Designated Entities

1. Overview

29. The Commission is committed to meeting the objectives of 47 U.S.C. § 309(j) of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. In *Adarand Constructors v. Peña*, 115 S.

Ct. 2097 (1995), the Supreme Court held that federal race-based measures are subject to strict scrutiny. Gender-based measures, on the other hand, are required to meet an intermediate standard of review. *United States v. Commonwealth of Virginia*, 116 S. Ct. 2264 (1996). Because commenters have submitted no evidence or data to support LMDS race- or gender-based auction provisions, the Commission concludes that it does not have a sufficient record to support such special provisions at this time. The Commission therefore adopts installment payments and bidding credits for small businesses in LMDS auctions as detailed below. The Commission believes that these special provisions will provide small businesses with a meaningful opportunity to obtain LMDS licenses. Moreover, many minority- and women-owned entities are small businesses and will therefore qualify for these same special provisions.

2. Installment Payments, Upfront Payments, Down Payments, and Unjust Enrichment

30. In order to promote the innovation that small businesses can bring to the development of LMDS, the Commission adopts installment payments for small businesses bidding for LMDS licenses. The Commission will define small businesses as entities that, together with affiliates and controlling principals, have average gross revenues not exceeding \$40 million for the three preceding years. Because considerable capital will be needed to bring LMDS to the public, the Commission also makes provision for entities with gross revenues exceeding \$40 million and will provide for installment payments for entities with \$75 million or less in average gross revenues for the three preceding years. The Commission believes that the high cost of LMDS and the presence of very large companies in the markets for various LMDS services make this option fully consistent with Congress's intent in enacting 47 U.S.C. § 309(j)(4)(A) to avoid a competitive bidding program that has the effect of favoring communications providers with established revenue streams over smaller entities.

31. Under the rules adopted, installment payments will be available to applicants that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million. Interest on their installment payments will be equal to the rate for U.S. Treasury obligations of maturity equal to the license term, fixed at the time of

licensing, plus 2.5 percent. Payments of interest and principal shall be amortized over the ten years of the license term. Small businesses—i.e., applicants that, together with affiliates and controlling principals, have average gross revenues for the three preceding years not exceeding \$40 million—will be eligible for installment payments at an interest rate based on the rate for U.S. Treasury obligations of maturity equal to the license term, fixed at the time of licensing, plus 2.5 percent (the same rate as that imposed on entities with \$40 million to \$75 million in average gross revenues). Payments for small businesses shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term. The rate of interest on the ten-year U.S. Treasury obligations will be determined by taking the coupon rate of interest on the ten-year U.S. Treasury notes most recently auctioned by the Treasury Department before licenses are conditionally granted.

32. The Commission believes it is appropriate to also adopt the unjust enrichment provisions of its broadband PCS rules in order to prevent large companies from becoming the unintended beneficiaries of these installment payment plans. The Commission believes that these rules are preferable to its current general unjust enrichment rules set forth at 47 CFR § 1.2111(c) because they provide greater specificity about funds due at the time of transfer or assignment and specifically address changes in ownership that would result in loss of eligibility for installment payments, which the general rules do not address. These rules specify that applicants seeking to assign or transfer control of a license to an entity not meeting the eligibility standards for installment payments must pay not only unpaid principal as a condition of Commission approval but also any unpaid interest accrued through the date of assignment or transfer.

33. Additionally, these rules provide that if a licensee utilizing installment payment financing seeks to change its ownership structure in such a way that would result in a loss of eligibility for installment payments, it must pay the unpaid principal and accrued interest as a condition of Commission approval of the change. Finally, in recognition of the tiered installment payment plans offered to broadband PCS licensees, the rule provides that if a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan, it must seek Commission approval of such

a change and adjust its payment plan to reflect its new eligibility status. A licensee, under this rule, may not switch its payment plan to a more favorable plan.

34. For purposes of determining small business status, or status as a business with average gross revenues of more than \$40 million but not more than \$75 million, the Commission will attribute the gross revenues of all controlling principals and affiliates of the small business applicant. The Commission chooses not to impose specific equity requirements on controlling principals. The Commission will still require, however, that in order for an applicant to qualify as a small business, qualifying small business principals must maintain control of the applicant. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. The Commission cautions that while it is not imposing specific equity requirements on small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a *bona fide* small business.

35. The Commission adopts a uniform upfront payment for all bidders. Its experience in previous auctions indicates that the Commission has underestimated the value of spectrum and that upfront payments have not created a barrier to small business participation in its auctions. The Commission believes that this action is consistent with its policy reason for requiring upfront payments—to deter insincere and speculative bidding and to ensure that bidders have the financial capacity to build out their systems.

36. With regard to reduced down payments for small businesses, its experience in previous auctions leads the Commission to adopt a uniform 20 percent down payment provision for all bidders. The Commission believes that this sizeable down payment will discourage insincere bidding and increase the likelihood that licenses are awarded to parties who are best able to

serve the public. A 20 percent down payment should also provide a strong assurance against default and sufficient funds to cover default payments in the unlikely event of default. Small businesses and entities with average gross revenues for the preceding three years of between \$40 million and \$75 million will be required to supplement their upfront payments to bring their total payment to 10 percent of their winning bids within 10 business days of a public notice announcing the close of the auction. Prior to licensing, they will be required to pay an additional 10 percent. The government will then finance the remaining 80 percent of the purchase price.

3. Bidding Credits and Unjust Enrichment

37. Based on the record before it, the Commission adopts a 25 percent bidding credit for small businesses in LMDS auctions, and a 15 percent bidding credit for entities with average gross revenues of more than \$40 million but not exceeding \$75 million. Commenters who advocated higher credits offered no data upon which to base such credits. The Commission declines to adopt a bidding credit for commercial entities that set aside part of their capacity for educational institutions at preferential rates. At this time, the Commission does not believe that it has an adequate record regarding the legal and policy implications of such bidding credits.

38. The Commission believes it is appropriate to align its unjust enrichment rules for LMDS with its narrowband PCS and 900 MHz SMR unjust enrichment rules as they relate to bidding credits. These rules provide that, during the initial license term, licensees utilizing bidding credits and seeking to assign or transfer control of a license to an entity that does not meet the eligibility criteria for bidding credits will be required to reimburse the government for the total value of the benefit conferred by the government, that is, the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer will be permitted.

39. The rules which the Commission now adopts additionally provide that, if, within the original term, a licensee applies to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest at the rate imposed for installment financing at the

time the license was awarded, must be paid to the United States Treasury as a condition of approval of the assignment or transfer. If a licensee that utilizes bidding credits seeks to make any change in ownership structure that would render the licensee ineligible for bidding credits, or eligible only for a lower bidding credit, the licensee must first seek Commission approval and reimburse the government for the amount of the bidding credit, or the difference between its original bidding credit and the bidding credit for which it is eligible after the ownership change, plus interest at the rate imposed for installment financing at the time the license was awarded. Additionally, if an investor subsequently purchases an interest in the business and, as a result, the gross revenues of the business exceed the applicable financial caps, this unjust enrichment provision will apply.

40. The amount of this payment will be reduced over time as follows: (1) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or, in the case of small businesses transferring to businesses having average gross revenues between \$40 million and \$75 million, 100 percent of the difference between the bidding credit received by the former and the bidding credit for which the latter is eligible); (2) in year three of the license term the payment will be 75 percent; (3) in year four the payment will be 50 percent; and (4) in year five the payment will be 25 percent, after which there will be no required payment. These assessments will have to be paid to the U.S. Treasury as a condition of approval of the assignment, transfer, or ownership change.

4. Rural Telephone Companies

41. The Commission does not believe that special provisions are needed to ensure adequate participation by rural telephone companies in the provision of LMDS services for the same reasons stated in the Third Notice of Proposed Rulemaking (*Third NPRM*) (60 FR 43740, August 23, 1995). Further, because the Commission is providing installment payments for entities with average annual gross revenues as high as \$75 million, the Commission believes that many rural telephone companies may qualify for installment payments. Also, the degree of flexibility the Commission will afford in the use of this spectrum, including provisions for partitioning or disaggregating spectrum, should assist in satisfying the spectrum needs of rural telephone companies at low cost. Therefore, the Commission

concludes that the interests of rural telephone companies are adequately addressed by its LMDS rules.

Final Regulatory Flexibility Analysis

42. As required by the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164, as amended by the Contract with America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847, 5 U.S.C. § 601 *et seq.*, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact of the rule changes adopted in this proceeding on small entities. The Secretary shall send a copy of this *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA, in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Final Regulatory Flexibility Analysis

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43. As required by the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the First Notice of Proposed Rulemaking (*First NPRM*) (58 FR 06400, January 28, 1993), the Third Notice of Proposed Rulemaking (*Third NPRM*) (60 FR 43740, August 23, 1995), and the Fourth Notice of Proposed Rulemaking (*Fourth NPRM*) (61 FR 39425, July 29, 1996) in this proceeding. The Commission sought written public comments on the

proposals in each of the Notices, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order (hereinafter in this Appendix referred to as the "Order") conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104-121, 110 Stat. 847 (1996). (Title II of the Contract with America Act is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. §§ 601 *et seq.*)

I. Need for and Objectives of Action

44. We adopt licensing and service rules to establish a flexible regulatory framework for the implementation of Local Multipoint Distribution Service (LMDS), a new broadband wireless communications service. We designate spectrum in the 31.0-31.3 GHz (31 GHz) band for LMDS, in addition to the 28 GHz designated in the *First Report and Order* (61 FR 44177, August 28, 1996), to ensure adequate spectrum needed for the broad array of video programming and one-way or two-way telecommunications and data services that may be offered by LMDS providers and to promote competition with incumbent cable and local exchange telephone service (LEC) providers.

45. We provide for licenses based on broad geographic areas known as BTAs and issued in two sizes for each area, 1,150 megahertz and 150 megahertz. The larger size service areas may offer economies of scale, while the smaller service areas may encourage new entrants and technological experiments to meet local or special needs. We limit the eligibility of incumbent LECs and cable companies from being issued the larger license in their areas of operation for three years, in order to promote the development of LMDS and ensure a meaningful increase in competition in the local telephone and cable markets.

46. The adoption of competitive bidding rules promotes the expedited delivery of this technology to the public and permits recovery for the public of a portion of the value of the public spectrum resource made available for commercial use. Additional objectives in adopting these rules are to assure that the spectrum is used efficiently, to provide entities of any size a meaningful opportunity to bid on this spectrum despite limited capital resources, and to avoid unjust enrichment through the methods used to award uses of this resource.

47. We deny petitions for reconsideration of our dismissal in the *First NPRM* of applications for waiver

which sought to allow petitioners to provide LMDS in the 28 GHz band under the existing point-to-point rules. We defer consideration of the comments filed in response to our tentative decision in the *Third NPRM* to grant CellularVision a Pioneer Preference, until the record is supplemented upon conclusion of a peer review process that we require in the Order.

II. Summary of Issues Raised by Public Comments in Response to Initial Regulatory Flexibility Analysis

A. IRFA Issues

48. We received one comment in direct response to the IRFA in the *Fourth NPRM* based on our request for comment on our proposal to designate, on a primary protected basis, the 31.0-31.3 GHz (31 GHz) band to LMDS. SBA opposes our proposed designation because it contends that the *Fourth NPRM* fails to consider the impact on existing users of the spectrum, which it argues are largely small governmental entities and small businesses. SBA contends that, in Section IV of the IRFA, the description and estimate of the number of small entities to which the proposed rule will apply misconstrues and underestimates the small entities that are incumbent licensees. It asserts that rather than 25 or 26 licensees, as we estimated, the comments of Sunnyvale indicate there are more than 40 incumbent local governments holding licenses. SBA contends that Sierra asserts there are as many as 100 incumbent licensees and there are over a dozen marketers or resellers of its equipment that are small businesses. We consider in the Order the comments of SBA and other commenters on the number of licensees in the 31 GHz service, as discussed fully in paragraphs 44-51 of the Order, and later in this FRFA.

49. SBA further argues that, in Section VI of the IRFA, we failed to consider significant alternatives to redesignating the entire 31 GHz band to LMDS that might minimize the impact on the incumbent licensees that are small entities. It argues that the only alternative to the proposed 31 GHz designation that we considered in the IRFA involved alternative spectrum bands for LMDS to use, rather than any alternatives for the incumbent licensees.

50. We consider in the Order the comments of SBA and other commenters on numerous alternatives to accommodate existing licensees in the 31 GHz services, as discussed fully in paragraphs 69-103 of the Order, and later in this FRFA. The IRFA itself did not identify any alternatives to our

proposed designation of 31 GHz for LMDS in order to reduce the impact on incumbent licensees. However, the text of the *Fourth NPRM*, in paragraphs 100–104, specifically identified several alternative methods by which incumbent operations could be accommodated if LMDS were authorized on a primary protected basis in the 31 GHz band. We requested comments on those alternatives and any other options we should consider that would not impose undue economic burdens on the new LMDS operations. We modify our proposal and adopt a band-sharing plan that provides non-LTTS incumbent licensees with protection from LMDS on a portion of the 31 GHz band, while designating the entire band for LMDS.

B. Other Service Issues

51. We also consider significant issues raised in comments to our proposals in the *First NPRM*, *Third NPRM*, and *Fourth NPRM* that may have a significant economic impact on a substantial number of small entities. In response to the *Fourth NPRM*, several comments were filed in response to our proposal to designate, on a primary protected basis, the 31 GHz band for LMDS and our request for comments on various alternatives for accommodating the incumbent 31 GHz licensees. Several comments were received from proponents of LMDS, including CellularVision, in favor of designating 31 GHz for LMDS, while several comments were received from proponents of the existing 31 GHz services that oppose changes to the services and their being relegated to secondary status to LMDS.

52. We received several comments in response to the accommodation proposals. All of the comments opposing our proposal, including IMSA and ITE on behalf of their members, argue that permitting LMDS to operate in the entire 300 megahertz on a primary basis essentially would eliminate their operations and that co-existence under these circumstances would not be possible. Palm Springs argues that it would be forced to disband its 31 GHz traffic communication system, creating undue hardship. On the other hand, CellularVision and Endgate assert that, as LMDS licensees, they would offer leasing options to incumbents, if available. Several comments argue against our suggestion that current 31 GHz services could move to another frequency band where protection for such operations is provided under our rules, such as 23 GHz. Sierra, as the primary manufacturer of the 31 GHz

equipment, asserts that the cost of modifying equipment for other bands would be more than replacement costs and also would require the development of new equipment. Topeka argues that moving to the 21 GHz band would cause financial hardship that would require allocating funds through local tax dollars and it seeks to avoid the costs of converting or replacing equipment that may be required by a move.

53. In response to our request for cooperation among the LMDS providers and existing licensees to explore methods for allowing the services to coexist, CellularVision and Sierra submit two different band-sharing plans. In CellularVision's plan for 25 megahertz at each end of band for incumbent services, Sierra argues that the equipment for 31 GHz would not function in the narrow bandwidth and important traffic signal services could not be provided. It argues that the 75 megahertz at each end that it proposes in its plan would not require expensive modifications and would accommodate existing services. Sierra argues that its plan is supported by current 31 GHz licensees. SBA and USDOT, as Federal Government entities, support the Sierra plan and argue that incumbent services should be maintained to assist in meeting national goals of reducing traffic congestion and air pollution.

54. The governmental entities, manufacturers, and organizations in support of incumbent services argue that we should accept new applications, modifications, and renewal applications in the band for traffic control systems. For example, Palm Springs asserts that it plans to build out its 31 GHz microwave system from the current 35 signals to a total of 70 signals over the next three years. It requests that we maintain their ability to use the band for their systems. Topeka argues that, if we adopt our proposal, we at least grandfather existing licensees in the LMDS rules to permit renewals and modifications and to ensure their protection from LMDS interference.

55. Of the remaining issues, some commenters oppose our proposal in the *Fourth NPRM* that both the 28 GHz band and the 31 GHz band be assigned as a single block in an LMDS license. For example, the Ad Hoc RTC and others request that the 31 GHz block be licensed as a separate unit in each LMDS service area. Emc³ argues that as little as 150 megahertz of spectrum could be used to provide a viable service using digital technology. WCA argues for three licenses per geographic area, the smallest being 150 megahertz. These commenters argue that additional licenses of smaller bandwidth would

provide for smaller operators, encourage the development of niche markets, and promote economical services similar to those in narrower bandwidth licenses, particularly in rural areas.

56. Some commenters, including M3ITC, oppose our proposal in the *Third NPRM* to license LMDS on broad geographic areas based on the Rand McNally Commercial and Marketing Guide Basic Trading Areas (BTAs). They argue that use of the smaller designations of Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) would provide more manageable territories within which to initiate service and be more affordable for entrepreneurs.

57. CellularVision and other commenters support our proposal to permit the disaggregation of spectrum by LMDS licensees and to permit the geographic partitioning of any part of an LMDS license.

58. Many comments support our request for comments in the *Fourth NPRM* on whether to temporarily restrict eligibility of incumbent LECs and cable companies that seek to obtain LMDS licenses in their geographic service areas. CVTT and SkyOptics argue that LECs and cable companies should be permanently ineligible in order to ensure that smaller companies enter the new market. Other comments, including WebCel, advocate restrictions limited to those areas in which LECs and cable companies currently operate. Other parties, including CellularVision, argue that we should impose restrictions on the largest LECs and cable companies or allow incumbents to hold only one LMDS license. Some parties oppose our proposal to define in-region incumbent LECs or cable companies based on a 20 percent population threshold and to define an attributable interest to be an ownership interest of 10 percent. Some parties, including RioVision and other small entities, agree that the restrictions could end when competition is sufficient, either after a five-year period or under a test established by the Commission.

59. Virtually all the comments support our proposal in the *First NPRM* to designate a new LMDS service from the existing point-to-point microwave common carrier service to a local multipoint distribution service that allows non-common carrier service as well as common carrier service. CellularVision, M3ITC, and other small entities seek a broad service definition that allows the LMDS provider to choose any common or non-common carrier service within the technical rules. CellularVision and other commenters oppose our proposal to

apply a presumption that a service is common carriage. They argue that the licensing framework should be sufficiently open and flexible to allow the business judgments of licensees to shape the nature of the services to be offered.

60. Some comments, including M3ITC, oppose our proposal in the *Third NPRM* to impose construction requirements on licensees and require service to be available to a minimum of one-third of the population of their geographic areas within five years from the date of license grant, and to two-thirds of the population within ten years from the date of the grant of the license. M3ITC alternatively argues that a time limit such as eight years would be sufficient to claim a service area, after which unserved areas should be opened for licensing. ComTech, on the other hand, supports the requirements and requests that we impose a faster requirement for companies that acquire a license adjacent to their existing service area to ensure against anti-competitive behavior.

61. With respect to the technical rules proposed in the *Third NPRM*, CellularVision, Endgate, and other commenters oppose an alternative proposal to establish a power flux density (PFD) rather than require applicants to coordinate frequencies among themselves at their service area boundaries. They argue that LMDS development is in its infancy and it would be difficult to determine a PFD standard to be protective of all LMDS system designs. CellularVision opposes requiring LMDS operators to use active power control and interlock techniques in their systems, which it contends are unnecessary, expensive, and will complicate designs. Next, Endgate opposes our proposal to restrict the use of various signal polarizations and require orthogonally-polarized signals as unnecessary. Further, Endgate opposes our proposal to restrict the maximum equivalent isotropically radiated power (EIRP) at which LMDS systems operate in the 28 GHz band to a -52 dBW/Hz. It opposes any limit less than -18 dBW/Hz and contends that the proposed limit will not provide coverage to justify an LMDS systems economically. CellularVision offers a compromise maximum limit of -35 dBW/Hz, which it argues is sufficient to meet the needs of LMDS subscribers and is conducive to frequency coordination. CellularVision and ComTech also argue that our proposal to adopt a frequency tolerance standard for subscriber transceiver equipment would be too costly.

C. Competitive Bidding Issues

62. With respect to competitive bidding (para. 303 of the Order), most commenters supported the Commission's proposal to auction LMDS spectrum. M3ITC, however, disagreed and proposed the use of lotteries, expressing a concern that small businesses may lack the financial ability to participate in the auction, particularly in the major markets. It suggested the imposition of a royalty or other fee on lottery winners to generate revenue in lieu of auctions.

63. The Commission's proposal to require participants in LMDS auctions to tender to the Commission a substantial upfront payment was generally supported (paras. 328-330 of the Order), but CellularVision and ComTech objected to establishing an upfront payment of \$0.02 per MHz-pop for the largest combination of MHz-pops a bidder anticipates being active on in any single round of bidding, as this would yield an upfront payment of approximately \$20 million for a BTA with one million pops and an upfront payment of approximately \$5 billion for the whole Nation.

64. The Commission proposed adoption of the transfer disclosure requirements contained in 47 CFR § 1.2111(a) for all LMDS licenses obtained through the competitive bidding process. CellularVision agreed with the Commission's proposal not to limit transfers and assignments of LMDS licenses.

65. The Commission sought comment on the best way to promote opportunities for businesses owned by minorities and women in light of the Supreme Court's decision in *Adarand Constructors v. Peña*, which held that federal race-based programs are subject to strict scrutiny. Commenters were also asked to document discrimination against such businesses. RioVision argued that the Commission should develop special provisions to provide designated entities with realistic opportunities to participate in the auction process, but RioVision and other commenters failed to supply evidence of discrimination against such businesses (paras. 344-346 of the Order).

66. The Commission's proposal to establish a small business definition for LMDS and adopt installment payments for small businesses bidding for LMDS licenses met with general approval from commenters. However, CellularVision recommended that the Commission establish a higher limit on average annual gross revenues in its definition of small business, arguing that the

proposed limit of \$40 million in average annual gross revenues was too low to help small businesses. The Commission's request for comment on the related issue of reduced upfront payments for small businesses yielded comments from CellularVision and Emc³ in favor of reduced upfront payments for these entities (paras. 344-345 of the Order).

67. The Commission's proposal to make the unjust enrichment provisions adopted in the Competitive Bidding Second Report and Order applicable to installment payments by small business applicants (paras. 344-345 of the Order) received general support, although CellularVision argued against restrictions after the seventh year of the license term. ComTech urged the Commission to adopt transfer rules which would relieve the transferor of any regulatory or other burdens associated with the newly created license. The Commission's proposal to make available a bidding credit of 25 percent for small businesses and the corresponding imposition of a payment requirement on transfers of such licenses to entities that are not small businesses was supported by commenters M3ITC, Emc³, and CellularVision, the latter encouraging the Commission to consider other regulatory measures, including a small business bidding credit higher than 25 percent. (para. 355 of the Order).

III. Description and Estimate of Small Entities Subject to Rules

68. The service regulations we adopt to implement LMDS would apply to all entities seeking an LMDS license, including small entities. In addition, the in-region, temporary eligibility restrictions we adopt would apply to qualifying LECs and cable companies. Finally, the rules we adopt to designate additional spectrum for LMDS in the 31.0-31.3 GHz band would apply to all entities providing incumbent services under existing rules for 31 GHz services. We consider these three groups of affected entities separately below.

A. Estimates of Potential Applicants of LMDS

69. SBA has developed definitions applicable to radiotelephone companies and to pay television services. We are using these definitions that SBA has developed because these categories approximate most closely the services that may be provided by LMDS licensees. The definition of radiotelephone companies provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. (13 CFR § 121.201, Standard

Industrial Classification (SIC) 4812.) The definition of a pay television service is one which has annual receipts of \$11 million or less. (SIC 4841)

70. The size data provided by SBA do not enable us to make an accurate estimate of the number of telecommunications providers which are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore use the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Likewise, the size data provided by SBA do not enable us to make a meaningful estimate of the number of cable and pay television providers which are small entities because it combines all such providers with revenues of \$11 million or less. We therefore use the 1992 Census of Transportation, Communications, and Utilities (Table 2D), conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 36 of 1,788 firms providing cable and pay television service have a revenue of greater than \$10 million. Therefore, the majority of LMDS entities to provide video distribution and telecommunications services may be small businesses under SBA's definition.

71. The Commission has not developed a definition of small entities applicable to LMDS licensees, which is a new service being licensed in the Order. The RFA amendments were not in effect until shortly before the *Fourth NPRM* was released, and no data has been received establishing the number of small businesses associated with LMDS. However, in the *Third NPRM* we proposed to auction the spectrum for assignment and requested information regarding the potential number of small businesses interested in obtaining LMDS spectrum, in order to determine their eligibility for special provisions such as bidding credits and installment payments to facilitate participation of small entities in the auction process. In the Order we adopt criteria for defining small businesses for purposes of determining such eligibility. We will use this definition for estimating the potential number of entities applying for auctionable spectrum that are small businesses.

72. As discussed in Section II.D.2.e. of the Order, we adopt criteria for defining small businesses and other eligible entities for purposes of defining

eligibility for bidding credits and installment payments. We define a small business as an entity that, together with affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the three preceding years (paras. 345 and 348 of the Order). Additionally, bidding credits and installment payments are available to applicants that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million (paras. 349 and 358 of the Order).

73. SBREFA was not in effect until the record in the *Third NPRM* closed, and we did not seek comment on the potential number of prospective applicants for LMDS that might qualify as small businesses. Therefore, we are unable to predict accurately the number of applicants for LMDS that would fit the definition of a small business for competitive bidding purposes. However, using the definition of small business we adopted for auction eligibility, we can estimate the number of applicants that are small businesses by examining the number of applicants in similar services that qualified as small businesses. For example, MDS authorizes non-common carrier services similar to what may be developed through LMDS. The MDS rules provide a similar definition of a small business as an entity that, together with its affiliates, has annual gross revenues for the three preceding years not in excess of \$40 million. A total of 154 applications were received in the MDS auction, of which 141, or 92 percent, qualified as small businesses.

74. We plan to issue 2 licenses for each of the 492 BTAs, excluding New York, that are the geographic basis for licensing LMDS. Thus, 984 licenses will be made available for authorization in the LMDS auction. Inasmuch as 92 percent of the applications were received in the MDS auction were from entities qualifying as small businesses, we anticipate receiving at least the same from LMDS applicants interested in providing non-common carrier services.

75. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules.

B. Estimates of LECs and Cable Companies Ineligible Under the Temporary, In-Region Eligibility Restriction

1. Local Exchange Carriers

76. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. (13 CFR § 121.201, SIC 4813) The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs.

77. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns." Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

2. Cable Services or Systems

78. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually. (13 CFR § 121.201, SIC 4841) This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 total cable and

other pay television services and 1,423 have \$11 million or less in revenue.

79. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's Rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. (47 CFR § 76.901(e)) Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

80. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

81. We find that the definition of small entities developed by SBA includes categories of services that are not included in LMDS, such as satellite master antenna systems. Thus, the estimated figure that 1,423 cable systems are small businesses that would be affected by our rule would be an overstatement. There is no other definition for us to use, since none has been developed for cable systems limited to LMDS-type services. Moreover, there is no harm in relying on the SBA number, which overestimates rather than underestimates potential cable systems that might be affected.

C. Estimates of Incumbent Services in 31 GHz Band

82. We proposed in the *Fourth NPRM* to designate the 31 GHz band for LMDS, on a primary protected basis, and requested comment on how to accommodate incumbent licensees, which are not protected from harmful interference under their licenses. In the IRFA, we estimated the number of small entities to which the proposed rule would apply based on the number of incumbent licensees in the 31 GHz band that are governmental entities. We stated there are 27 incumbent licensees and that a total of 25 or 26 are small entities. Our adjustment was based on the requirement that we estimate the number of governmental entities with populations of less than 50,000 that would be affected by our new rules. (See 5 U.S.C. § 601(5).) We then applied the Census Bureau ratio that 96 percent of all counties, cities, and towns in the Nation have populations of fewer than 50,000. We requested comment in the IRFA on the number of small entities significantly impacted by our proposed designation of 31 GHz for LMDS.

83. We address SBA's comments in paras. 44–46 of the Order, where we agree that we did not reflect the correct number of total licensees in the 31 GHz band. We consider the lists of licensees and users submitted by Sunnyvale and Sierra, which we find include duplicates and several users that are not licensed. Based on a review of our database, we found there are a total of 86 licensees for 31 GHz services under the current rules. We found that licensees fall into three categories of services, as follows: (1) Governmental entities using the band primarily for traffic control systems; (2) cellular and other communications companies providing LTTS; and (3) private business users.

84. Of the total licensees, 59 licensees are LTTS licensees, 8 are private business users, and 19 are governmental entities. Of the 19 governmental entities, 14 are municipalities and the remainder are counties or states. The cities appear small in size, except for the Cities of Charlotte, San Diego, and Topeka. Thus, the correct number of small governmental entities that are licensees in the 31 GHz services should be 11 or less, rather than the 26 or 27 we stated in the IRFA. As for the entire number of licensees that qualify as small entities, we cannot determine from the remaining 59 LTTS licensees or 8 private business licensees which are small. Many of the LTTS licensees are not small, such as MCI or Bell Atlantic New Jersey, Inc. Nevertheless, to ensure

that no small interests are overlooked, we will assume that most of these are small licensees and, together with the 11 small governmental entities, will consider at least 50 of all 86 licensees to be small entities.

IV. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

85. The Order adopts a number of rules that will entail reporting, recordkeeping, and third party consultation. We find that these requirements are the minimum needed to ensure the integrity and efficiency of LMDS licensing and serve the public interest, as reflected in this record.

86. In designating the 31 GHz band for LMDS, we adopt in the Order a band-sharing plan that designates the two outer 75 megahertz segments for non-LTTS incumbent licensees to be protected from harmful interference from LMDS. We adopt technical rules that require LMDS licensees to coordinate frequencies with incumbent licensees. We adopt a procedure to allow non-LTTS incumbent licensees in the middle 150 megahertz segment that is not protected to relocate to the outer segments within 15 days after the effective date of the Order and to file an application to modify their licenses to reflect the new frequencies (paras. 91–92 of the Order). Relocation and protection are accorded to all incumbents except LTTS, which are temporary services that operate on a secondary basis and in any band, so that the protections would not benefit them. Many of the non-LTTS incumbent licensees are small entities. We find that the relocation and coordination process we have established does not impose undue cost burdens and we believe it is administratively manageable. Moreover, we have found that while relocation of such incumbents to adjacent bands will involve some costs for adjusting equipment, we do not expect at this time that such costs will impose an undue burden on small incumbents.

87. We limit the eligibility of incumbent LECs and cable companies to hold the larger license of 1,150 megahertz in each BTA for LMDS. They are barred (for a period of three years from the effective date of LMDS rules) from holding an attributable interest in such a license in the service area in which they operate. We adopt rules similar to the CMRS spectrum cap that defines in-region if 10 percent or more of the population of the BTA is within the applicant's service area. We adopt attribution rules that apply when an ownership interest is at least 20 percent. However, we permit incumbent LECs

and cable companies to participate fully in the auction of any in-region license, so long as they come into compliance after conclusion of the auction. We require such LMDS licensees to divest overlapping ownership interests by selling their existing system or by partitioning within 90 days after the grant of their license. We find that these requirements should not affect many small entities, which are not likely to be incumbents LECs or cable companies. These requirements may also create opportunities for small businesses who wish to bid for LMDS licenses and compete in the LMDS market.

88. We adopt a number of service rules to initiate LMDS under procedures for licensing and filing applications, conducting operations, and establishing technical parameters. Applicants are required to submit a completed FCC Form 175. Auction winners are required to file a completed FCC Form 600. All applications are submitted for 30-day public notice and applicants are required to keep FCC Form 600 up-to-date concerning all of the foreign ownership information requested on the form. Licensees may change status between common carriage and non-common carriage or add an additional status to conduct both operations upon notification to the Commission that does not require prior approval. However, common carriers discontinuing or reducing operations must adhere to statutory notification requirements imposed in Part 63 of the Commission's Rules.

89. We adopt limited technical regulations. We impose a coordination process on each LMDS licensee prior to initiating service in the 27.5–28.35 GHz band in which each adjacent LMDS licensee and each potentially-affected, adjacent-channel FSS licensee must provide values for the appropriate operational parameters. Coordinating parties must supply information related to their channelization and frequency plan, receiver parameters, and system geometry. Coordination between adjacent LMDS systems need only encompass hubs located within 20 kilometers of BTA boundaries. We would resolve any conflicts between licensees. LMDS licensees in the two outer segments of the 31 GHz band also must coordinate with non-LTTS incumbent licensees to protect those licensees from harmful interference. In some cases, the services of persons with technical or engineering expertise may be required to assist with the coordination information.

90. We are directed by Section 309(j)(4)(E) of the Communications Act to “require such transfer disclosures and

anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.” The Commission adopted safeguards designed to ensure that the requirements of this section are satisfied, including a transfer disclosure requirements for licenses obtained through the competitive bidding process for LMDS. An applicant seeking approval for a transfer of control or assignment of a license within three years of receiving a new license through competitive bidding procedures must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license.

91. With respect to small businesses, we have adopted unjust enrichment provisions to deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use the competitive bidding process to obtain a license at a lower cost than they would otherwise have to pay and to later sell it at a profit, and to ensure that large businesses do not become the unintended beneficiaries of measures meant to help small firms. Small business licensees seeking to transfer their licenses to entities which do not qualify as small businesses, or entities with more than \$40 million but not more than \$75 million in average gross revenues for the three preceding years that seek to transfer their licenses to larger entities, as a condition of approval of the transfer, must remit to the government a payment equal to a portion of the total value of the benefit conferred by the government.

V. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

92. We modify a number of our proposals in the *Third NPRM* and *Fourth NPRM* to minimize any significant economic impact on small entities consistent with the objectives of the Order based on the comments we have received in this proceeding.

A. Alternatives To Minimize Impact of Redesignation of 31 GHz for LMDS

93. Specifically, we decided that LMDS needed the additional 300

megahertz of spectrum at 31 GHz in order to obtain the 1 gigahertz of unencumbered spectrum for broadband services and sufficient spectrum to experiment with services and technology that competes with telephone and cable operators. We deny requests from CellularVision and other commenters to consider an alternative allocation to spectrum below 27.5 GHz or the request from ICE-G to consider allocation to the 40 GHz band. We considered these matters in the *First Report and Order* and their availability has not changed since then.

94. Among the alternatives, we decide that co-existence of incumbent 31 GHz licensees with LMDS would not be possible because incumbents would be reduced to a secondary status if LMDS were accorded primary protected status and the interference from LMDS would render such services useless. We agree with CellularVision that incumbents could lease or otherwise arrange to continue to use redesignated spectrum, but find that incumbents cannot rely on these arrangements as a reasonable alternative to minimize the impact. We also decide that movement to another band such as 23 GHz that provides protection for incumbent services is not feasible because of the major costs to incumbents to modify or replace equipment.

95. We decide that the plans submitted by CellularVision and Sierra to share the 31 GHz band establish a framework for us to reach a compromise based on the needs of both LMDS and 31 GHz proponents and adopt an outcome that is more equitable and balanced. We decide to segment the 300 megahertz for establishing protections based on the enumerations used by Sierra. Under this plan, the middle 150 megahertz is designated for LMDS on a primary protected basis and incumbent licensees are not granted protection from harmful interference. At each end of the band, a segment of 75 megahertz each is designated for protection of non-LTTS incumbent licensees from LMDS to enable them to continue existing operations. We decide that the plan of CellularVision to increase the middle segment to 250 megahertz on a primary protected basis and leave incumbents protected in only 25 megahertz at each end would not accommodate traffic signal technology at intersections and would be too costly. We decide that LMDS requires no more than 150 megahertz of unencumbered spectrum in the middle.

96. We do not adopt Sierra's limitations on LMDS use or access of the entire 31 GHz band. We agree with CellularVision and other comments that

the benefits to according LMDS access to the entire band and to allowing the full array of LMDS services can be achieved while according the protections that non-LTTS incumbent licensees need to continue their operations. Thus, we accord LMDS a protected status throughout the band, but require LMDS in return to protect non-LTTS existing services in the outer segments. We do not agree with CellularVision that incumbents should be excluded altogether from the middle segment, inasmuch as LMDS has primary status there and is protected from harmful interference there.

97. To accommodate incumbents, we permit them to relocate to the outer segments and adopt a procedure that requires them to file an application to modify their licenses within 15 days after the rules adopted in the Order take effect, if they choose to relocate. Under our current rules, any 31 GHz licensee filing a modification application in accordance with the Order will be able to implement license changes any time during the 18-month period after the Commission grants the modification. Moreover, because the incumbents are not authorized to provide service on a common carriage basis, their modification applications are not subject to the public notice and petition to deny requirements of section 101.37 of the Commission's Rules. Thus, applications for modification of an incumbent's license under the relocation procedure would be expedited.

98. We find that relocation within the band gives existing 31 GHz licensees a reasonable opportunity to continue their operations with a minimum of expense and disruption. We decide not to include LTTS licensees for protection in the outer segments nor permit them to relocate, but to leave their status unchanged because of the nature of their services. These decisions are discussed more fully at paras. 85–93 of the Order.

99. We decide to limit the band-sharing plan to achieve protections for existing 31 GHz non-LTTS licensees in order to minimize the impact of our objective of implementing LMDS in 31 GHz on existing traffic control systems provided by small municipalities and other governmental entities. Commenters, including Palm Springs, demonstrate that public funds have been expended that would be wasted if incumbents were not protected and that these systems help control traffic and air pollution in furtherance of Federal goals. However, we decide not to allow future licensing under the existing rules and to limit incumbent licensees to their existing operations. We carefully

consider the advantages and disadvantages of future growth under such rules, and conclude that it would be inconsistent with our objective to permit the licensing of LMDS on 31 GHz in order to meet the consumer demand for those telecommunications and video services it will provide.

100. We decide to permit incumbent licensees to renew and to modify their licenses to the extent they are not expanding service. As a result, the plans of Palm Springs and other licensees to expand existing operations under current rules cannot be achieved. The impact on small entities would not be extensive, inasmuch as we have shown that all incumbents are few in number and engaged in short-range services, as compared with the potential harm to LMDS development if the entire 31 GHz spectrum were not available and was encumbered by changing, incompatible, localized services.

101. Because we do not permit the licensing of new 31 GHz services, we find the dismissal of all pending applications to be consistent with our objectives. As we noted in para. 100 of the Order, we have concluded that it is in the public interest to dismiss the pending applications. Moreover, a review of our database indicates that all pending applications were filed after the release date of the *Fourth NPRM* and by new applicants not currently licensed. Thus, these applicants were on notice that we were considering a change in our rules for the 31 GHz band. To the extent any of these applicants are small entities, the impact would not be considerable because they have not invested fully in such new systems and alternative spectrum or options to gain access to 31 GHz is available, such as leasing from LMDS licensees.

B. Alternatives To Minimize Impact of LMDS Service Rules

102. To accommodate concerns expressed by Ad Hoc RTG and others about our proposal to license LMDS as a single block of the 28 GHz and 31 GHz spectrum, we decided to auction two licensees of different sizes for each BTA. We considered the band-segmentation plan we adopted for protecting non-LTTS incumbent licensees in 31 GHz and the comments of LMDS proponents that 150 megahertz is viable for certain LMDS services. We decide to issue one license for 1,150 megahertz, consisting of 1,000 megahertz located in the 28 GHz band and 150 megahertz in the middle of the 300 megahertz located in the 31 GHz band. We also will issue a smaller license for 150 megahertz consisting of the two 75 megahertz segments located at each end of the 300

megahertz block in 31 GHz. The small license can be acquired by LMDS to achieve the objectives of the broadest spectrum for its experimentation, or may be used by incumbent licensees to accommodate their needs to continue using the 31 GHz band on a protected basis or by small entities such as rural interests to develop niche markets or provide more economical narrower bandwidth services. We have decided to establish a 1,150 megahertz license because we believe that a large block of unencumbered spectrum will provide LMDS providers with an opportunity to compete with broadband services and develop two-way services.

103. We decide that our proposal to license LMDS based on BTA geographic service areas is the most logical area for LMDS. We decline to use the smaller MSAs and RSAs requested by M3ITC and other commenters because their areas are smaller than existing video programming and telephony service areas and their use might result in unnecessary fragmentation of natural markets. BTAs ensure that the wide array of LMDS services can be provided, afford greater economies of scale, and vary in size to afford building blocks for establishing an LMDS system. We do not restrict the number of BTAs a licensee may acquire at auction, but also point out that the varying sizes provide more opportunities for smaller businesses to enter the market.

104. We decide that our proposal for disaggregating spectrum and allowing the geographic partitioning of an LMDS licensed area would benefit small business and allow some areas, such as rural areas, to be served more readily (para. 145 of the Order).

105. We agree with WebCel and other small entities to adopt our proposal to restrict eligibility of incumbent LECs and cable companies and decide that they may not acquire the larger LMDS license of 1,150 megahertz in their geographic service areas for three years. We find that such firms would not need the small license for unencumbered service and thus would not have the incentive to hobble competition. We do not adopt the request of SkyOptics and CVTT for permanent ineligibility to protect smaller entities, because they can bid for the smaller license and the 3-year period may be sufficient to allow new entrants to become established. We do not agree with commenters from the rural telephone community that argue against any restrictions on LEC ownership of LMDS licenses. We find our restrictions should not hinder LMDS in rural areas, because they do not have the overlap that triggers our restriction and they can acquire

spectrum from an LMDS licensee through contract or partitioning and disaggregation. We modify our proposal to define in-region incumbent LECs or cable companies to reflect the same provisions in the CMRS spectrum cap. This ensures consistency in our rules for wireless services for ease of compliance and efficiency.

106. In adopting application procedures for LMDS, we agree with CellularVision and other small entities to adopt a broad service definition that allows the LMDS provider to provide any fixed microwave service, whether common or non-common carrier. We expand our proposal to allow an applicant or licensee to apply for both common and non-common authorization in the same license, depending on the services it seeks to provide. We clarify the effect of the Telecommunications Act of 1996 on the nature of the video programming and telecommunications services that we originally identified as potential services in LMDS to assist applicants and licensees in determining the regulatory status to govern their operations. We agree with commenters to not apply the presumption we proposed to treat LMDS as common carriage.

107. By authorizing both common and non-common carrier service in a single license, we eliminate the burden in our proposed procedures that would require a licensee to submit an application whenever it sought to change its services between common and non-common carrier services. We decide this achieves economies in the licensing process, ensures the flexibility licensees need to provide the full array of LMDS offerings, and promotes the development of the services that may compete with existing telecommunications and video programming services. To ensure that applicants or licensees are in compliance with the statutory requirements imposed on common carriers and reflected in the Part 101 rules that govern LMDS, we decide to subject all LMDS applications to the 30-day public notice provisions and require all applicants to submit information in response to all the alien ownership eligibility restrictions. Consequently, we can rely on a simplified procedure for licensees to notify us of any change in their regulatory status, either by changing or adding common carrier or non-common carrier status, through notification by application after the change is implemented, unless the change results in the impairment of a common carrier service that requires prior approval under the discontinuance

rules. These procedures are adopted to ensure implementation of LMDS under a simplified format.

108. For the technical rules, we agree with commenters to use the prior frequency coordination procedures rather than a service area boundary PFD limit, which could stifle technology and inhibit flexibility in system design. We decide to adopt uniform polarization to achieve greater system efficiency. We disagree with CellularVision and ComTech that adopting a frequency stability standard would be costly, but find that it aids in coordinating usage to assist the rapid development of service.

C. Alternatives To Minimize Impact of LMDS Auction Rules

109. We decline to adopt the use of lotteries in lieu of auctions. We conclude that auctioning LMDS licenses would further the Communications Act's objectives: first, by speeding the development and deployment of this new technology, products and services to the public with minimal administrative or judicial delay, and encouraging efficient use of the spectrum; second, by fostering economic opportunity and the distribution of licenses among a wide variety of applicants, including small businesses; and, third, by enabling the public to recover a portion of the value of the public spectrum. Concerns regarding small businesses having the financial ability to participate in LMDS auctions are addressed by the special provisions adopted for small businesses. We also decline to adopt Public Television's suggestion of a set-aside of spectrum for educational purposes.

110. We adopt a uniform upfront payment for all applicants for LMDS auctions, and decide not to adopt a reduced down payment for small businesses, because we believe that this action is consistent with our reason for requiring upfront payments, i.e., to deter insincere and speculative bidding and to ensure that bidders have the financial capacity to build out their system. We delegate authority to the Wireless Telecommunications Bureau to determine an appropriate calculation for the upfront payment, which the Bureau will announce by Public Notice. The Bureau will take into consideration CellularVision's and ComTech's objection to the proposed formula of \$0.02 per MHz-pop for the largest combination of MHz-pops a bidder anticipates being active on in any single round of bidding.

111. Because we believe the record with regard to past discrimination, continuing discrimination, and other significant barriers experienced by

minorities and women is insufficient to support race- and gender-based competitive bidding provisions under the standards of judicial review applicable to such provisions, we do not adopt such provisions. Instead, we adopt race- and gender-neutral provisions such as installment payments and bidding credits for small businesses in order to provide small businesses with an opportunity to obtain LMDS licenses. Many minority- and women-owned entities are small businesses and will therefore qualify for these same special provisions.

112. CellularVision recommended a definition of small business with a ceiling of \$100 million in annual gross revenues. We choose, for the purposes of LMDS auctions, to define a small business as an entity that, together with affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the three preceding years. To address CellularVision's concerns, we also adopt bidding credits and installment payments for LMDS applicants that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million, as elaborated in paras. 346-348 of the Order.

113. Emc³ and CellularVision proposed a small business bidding credit of 25 percent or more. The rules adopted in the Order provide a 25 percent bidding credit for small business applicants in the LMDS auctions, and a 15 percent bidding credit for entities with average gross revenues of more than \$40 million but not exceeding \$75 million. Commenters who advocated higher credits offered no data upon which to base such credits. We also decline to offer a bidding credit to commercial entities that set aside part of their capacity for educational institutions at preferential rates. We do not believe that we have an adequate record regarding the legal and policy implications of such credits.

VI. Report to Congress

114. We will submit a copy of this Final Regulatory Flexibility Analysis, along with the Order, in a report to Congress pursuant to 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Ordering Clauses

115. It is ordered that the actions of the Commission herein are taken pursuant to sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 257, 303(r), 309(j).

116. It is further ordered that the Commission's Rules are amended as set forth in Appendix A, effective June 30, 1997.

117. It is further ordered that the Petitions for Reconsideration of the Memorandum Opinion and Order in Application of Hye Crest Management, Inc., for License Authorization in the Point-to-Point Microwave Radio Service in 27.5–29.5 GHz Band and Request for Waiver of the Rules, File No. 10380-CF-P-88, filed by the University of Texas-Pan American, RioVision of Texas, Inc., the City of Gustine, California, Video/Phone Systems, Inc., Northeast Wireless, High Band Broadcasting Corporation, FM Video Broadcasters, Western Sierra Bancorp, M3 Illinois Telecommunications Corporation, Perry W. Haddon as President of GHz Equipment Company; Connecticut Home Theater Corporation, Alliance Associates, Stevan A. Birnbaum, BMW Associates, Joseph B. Buchwald, Celltel Communications Corporation, Linda Chester, Thomas F. Clark, the Committee to Promote Competition in the Cable Industry, Arnold Cornblatt, CT Communications Corporation, Evanston Transmission Company, Judy Feinberg, Lawrence Fraiberg, Freedom Technologies, Inc., Rosalie Y. Goldberg, Harry A. Hall, Lloyd Hascoe, L.D.H. International, Inc., Paul R. Likins, William Lonergan, Herbert S. Meeker, James L. Melcher, Frederick Myers, Frederick M. Peyser, PMJ Securities, Inc., Robert E. La Blanc Associates, Inc., Jeanne P. Robertson, Sanford Robertson, Robert Rosenkranz, R&R Telecommunications Partners, SCNY Telecommunications, Inc., Seaview Telesystems Partners, Lewis W. Siegel, Michael S. Siegel, Kim Sloan, SMC Associates, Charles D. Snelling, Telecom Investment Corp., Telecommunications/Haddock Investors, Video Communications Corporation, Diane Wechsler, and Ivan Wolff are denied.

118. It is further ordered that Local Multipoint Distribution Service licensees shall attach appropriate labels to every subscriber transceiver antenna and provide notice to users regarding the potential hazard of remaining within the Maximum Permissible Exposure separation distance of these high gain antennas, as indicated herein.

119. It is further ordered that, effective upon adoption of this Order, applications will not be accepted for filing under Part 101 of the Commission's Rules either for new services or for license modifications in the 31 GHz band, except those filed by incumbent city licensees and private business users pursuant to the terms of

this Order, and that all such applications for license modifications shall be filed no later than 15 days following the effective date of this Order.

120. It is further ordered that the applications filed for authorization to operate under the existing licensing rules for the 31,000–33,000 MHz band and pending review under the existing rules shall be dismissed, and applicants that submitted filing fees with the applications shall be refunded.

121. It is further ordered that, pursuant to section 1.402(h) of the Commission's Rules, the Chief, Office of Engineering and Technology, shall select a panel of experts to review the specific technologies set forth in the pioneer preference request that was filed by the Suite 12 Group, on September 23, 1991, as amended on November 19, 1991, and that was accepted and placed on Public Notice on December 16, 1991.

122. It is further ordered that, pursuant to Section 5(c) of the Communications Act of 1934, the Chief, Wireless Telecommunications Bureau, is granted delegated authority to implement and modify auction procedures in the Local Multipoint Distribution Service, including the general design and timing of the auction; the number and grouping of authorizations to be offered in a particular auction; the manner of submitting bids; the amount of bid increments; activity and stopping rules; and application and payment requirements, including the amount of upfront payments; and to announce such procedures by Public Notice.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Environmental impact statements, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 2

Radio.

47 CFR Part 74

Radio.

47 CFR Part 78

Radio.

47 CFR Part 95

Radio.

47 CFR Part 101

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission

William F. Caton,
Acting Secretary

Rule Changes

Parts 1, 2, 74, 78, 95, and 101 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. §§ 151, 154, 303 and 309(j), unless otherwise noted.

2. Section 1.1307 is amended by revising the section heading and adding a new entry at the end of Table 1 in paragraph (b)(1) as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(1) * * *
* * * * *
(b) * * *

TABLE 1.—TRANSMITTERS, FACILITIES, AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (Title 47 CFR Rule Part)	Evaluation required if:
Local Multipoint Distribution Service (subpart L of part 101).	<p><i>Non-rooftop antennas:</i> Height above ground level to radiation center <10 m and power >1640 W EIRP.</p> <p><i>Rooftop antennas:</i> Power > 1640 W EIRP. LMDS licensees are required to attach a label to subscriber transceiver antennas that (1) provides adequate notice regarding potential radio frequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC radio frequency emission guidelines contained in FCC OST Bulletin 65, 2d Edition.</p>

3. Section 1.77 is amended by revising paragraph (i) to read as follows:

§ 1.77 Detailed application procedures, cross references.

* * * * *

(i) Rules governing applications for authorizations in the Common Carrier and Private Radio terrestrial microwave services and Local Multipoint

Distribution Services are set out in part 101 of this chapter.

4. Section 1.2102 is amended by adding paragraph (a)(9) as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) * * *

(9) Local Multipoint Distribution Service (LMDS) (see 47 CFR part 101).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

5. The authority citation for Part 2 continues to read as follows:

Authority: Sec 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

6. Section 2.106 is amended by revising the entries for 27.5–29.5 GHz and 31.0–31.3 GHz to read as follows:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
Region 1—allocation GHz	Region 2—allocation GHz	Region 3—allocation GHz	Government Allocation GHz	Non-Government Allocation GHz	Rule part(s)	Special-use frequencies.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
27.5–29.5	27.5–29.5 FIXED FIXED-SAT- ELLITE (Earth- to-space) MOBILE		27.5–29.5	27.5–29.5 FIXED FIXED-SAT- ELLITE (Earth- to-space) MOBILE	SATELLITE COM- MUNICATIONS (25) FIXED MICRO- WAVE (101)	
*	*	*	*		*	*
31.0–31.3	31.0–31.3 FIXED MOBILE Standard Fre- quency and Time Signal- Satellite (space- to-Earth) Space Research 884 885 886		31.0–31.3 Standard Fre- quency and Time Signal- Satellite (space- to-Earth) 886 US211	31.0–31.3 FIXED MOBILE Standard Fre- quency and Time Signal- Satellite (space- to-Earth) 884 886 US211	FIXED MICRO- WAVE (101)	
*	*	*	*	*	*	*

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

7. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. §§ 154, 303, 554.

§ 74.602 [Amended]

8. In § 74.602, paragraph (h) is removed and paragraphs (i) and (j) are redesignated as paragraphs (h) and (i).

PART 78—CABLE TELEVISION RELAY SERVICE

9. The authority citation for Part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

§ 78.18 [Amended]

10. In § 78.18, paragraph (a)(5) is removed and paragraphs (a)(6) through

(a)(8) are redesignated as paragraphs (a)(5) through (a)(7).

PART 95—PERSONAL RADIO SERVICES

11. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

§ 95.1 [Amended]

12. In § 95.1, paragraph (b) is removed and paragraph (c) is redesignated as (b).

PART 101—FIXED MICROWAVE SERVICE

13. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 309(j), unless otherwise noted.

14. Section 101.1 is amended by revising paragraph (a) to read as follows:

§ 101.1 Scope and authority.

(a) The purpose of the rules in this part is to prescribe the manner in which portions of the radio spectrum may be made available for private operational,

common carrier, and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

* * * * *

15. Section 101.3 is amended by revising the two definitions in alphabetical order to read as follows:

* * * * *

Local Multipoint Distribution Service Hub Station. A fixed point-to-point or point-to-multipoint radio station in a Local Multipoint Distribution Service System that provides one-way or two-way communication with Local Multipoint Distribution Service Subscriber Stations.

* * * * *

Local Multipoint Distribution Service System. A fixed point-to-point or point-to-multipoint radio system consisting of Local Multipoint Distribution Service Hub Stations and their associated Local Multipoint Distribution Service Subscriber Stations.

* * * * *

16. Section 101.5 is amended by revising paragraph (d) to read as follows:

§ 101.5 Station authorization required.

(d) For stations authorized under subpart H (Private Operational Fixed Point-to-Point Microwave Service), subpart I (Common Carrier Fixed Point-to-Point Microwave Service), and subpart L of this part (Local Multipoint Distribution Service), construction of new or modified stations may be initiated prior to grant of an authorization. As a condition to commencing construction under this paragraph (d), the Commission may, at any time and without hearing or notice, prohibit such construction for any reason. Any construction conducted under this paragraph is at the applicant's sole risk.

17. Section 101.11 is amended by revising paragraph (a) to read as follows:

§ 101.11 Filing of applications, fees, and number of copies.

(a) Part 1 of this chapter contains information on application filing procedures and requirements for all services authorized under this part. All filings, unless they are filed electronically, must include the original application plus one copy. Instructions for electronic filing will be provided by public notice.

18. Section 101.15 is amended by revising paragraph (a) to read as follows:

§ 101.15 Application forms for common carrier fixed stations.

(a) *New or modified facilities.* Except for Local Multipoint Distribution Service in subpart L of this part, FCC Form 415 must be submitted and a license granted for each station. FCC Form 415 also must be submitted to amend any license application, to modify any license pursuant to §§ 101.57(a) and 101.59, and to notify the Commission of modifications made pursuant to § 101.61. Cancellation of a license may be made by letter.

19. Section 101.19 is amended by revising paragraph (a)(5) to read as follows:

§ 101.19 General application requirements.

(5) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (e.g., those required by §§ 101.103(d), 101.701, and 101.1001 through 101.1015).

20. Section 101.21 is amended by revising the introductory paragraph and adding a new paragraph (g) as follows:

§ 101.21 Technical content of applications.

Applications, except FCC Form 175, must contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see subparts C, F, G, I, J, and L of this part, as appropriate). The following paragraphs describe a number of technical requirements.

(g) Each application in the Local Multipoint Distribution Service must contain all technical information required by FCC Form 600 and any other applicable form or associated Public Notices and by any applicable rules in this part.

21. Section 101.29 is amended by revising paragraph (a) to read as follows:

§ 101.29 Amendment of pending applications.

(a) Any pending application may be amended as a matter of right if the application has not been designated for hearing, or for comparative evaluation pursuant to § 101.51, or for the random selection process, or is not subject to the competitive bidding process, provided, however, that the amendments must comply with the provisions of § 101.41 as appropriate.

22. Section 101.35 is amended by adding new paragraph (e) as follows:

§ 101.35 Preliminary processing of applications.

(e) Competitive bidding applications will be processed pursuant to part 1, subpart Q, of this chapter and subpart M of this part.

23. Section 101.37 is amended by revising paragraphs (a)(1), (a)(3), and (a)(5) and adding new paragraph (e) to read as follows:

§ 101.37 Public notice period.

(a) * * *

(1) The acceptance for filing of common carrier applications, Local Multipoint Distribution Service applications, and major amendments thereto;

(3) The receipt of common carrier applications and Local Multipoint Distribution Service applications for

minor modifications made pursuant to § 101.59;

* * * * *

(5) Special environmental considerations as required by part 1 of this chapter.

* * * * *

(e) Paragraphs (a) through (c) of this section shall not apply to FCC Form 175.

24. Section 101.45 is amended by revising introductory paragraph (b) as follows:

§ 101.45 Mutually exclusive applications.

* * * * *

(b) A common carrier application, except in the Local Multipoint Distribution Service, will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

* * * * *

25. Section 101.47 is amended by revising introductory paragraph (f) to read as follows:

§ 101.47 Consideration of applications.

* * * * *

(f) Except with respect to applications subject to subpart L of this part, whenever the public interest would be served thereby, the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random selection process (in specified services under this part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 101.51, as appropriate, if it appears:

* * * * *

26. Section 101.57 is amended by revising paragraph (a) to read as follows:

§ 101.57 Modification of station license.

(a)(1) Except as provided in § 101.59, and except in the case of licenses authorized for operation in the 31,000–31,300 MHz band prior to March 11, 1997, and except in the Local Multipoint Distribution Service as provided in § 101.61(c)(10), no modification of a license issued pursuant to this part (or the facilities described thereunder) may be made except upon application to the Commission.

(2) Notwithstanding the provisions of subparagraph (1) of this paragraph, licensees (other than licensees in the Local Television Transmission Service) authorized to operate in the 31,000–31,300 MHz band prior to March 11,

1997, may submit applications to the Commission for modification of such licenses not later than the end of the 15-day period following June 30, 1997.

* * * * *

27. Section 101.59 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 101.59 Processing of applications for facility minor modifications.

(a) Except in the Local Multipoint Distribution Service as provided in § 101.61(c)(10), unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b) of this section and proposes only the change specified in paragraph (c) of this section will be deemed to have been authorized by the Commission.

(b) * * *

(1) It is in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, Digital Electronic Message Services, and Local Multipoint Distribution Services;

* * * * *

28. Section 101.61 is amended by revising introductory paragraph (b), and paragraph (b)(3), adding new paragraphs (c)(9) and (c)(10), and revising paragraph (d) to read as follows:

§ 101.61 Certain modifications not requiring prior authorization.

* * * * *

(b) Licensees of fixed stations in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, Digital Electronic Message Services, and Local Multipoint Distribution Services may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

* * * * *

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 415 within 30 days after the changes are made, except that licensees in the Local Multipoint Distribution Service must notify the Commission by the submission of a completed FCC Form 600 within 30 days or, if the change is subject to § 101.305(b) or 101.305(c), within the time periods required in those sections.

* * * * *

(c) * * *

(9) In the Local Multipoint Distribution Service, changes in regulatory status from common carrier to non-common carrier status or non-common carrier to common carrier status, or from the addition of common carrier or non-common carrier status to an existing license in order to be authorized to provide both common carrier and non-common carrier services; except that changes that result in the discontinuance, reduction, or impairment of the existing service are subject to the requirements of § 101.305 (b) and (c).

(10) In the Local Multipoint Distribution Service, the addition, removal, or relocation of facilities within the area authorized by the license, except as provided in § 101.1009.

(d) Licensees may notify the Commission of permissible changes or correct erroneous information on a license not involving a major change (i.e., a change that would be classified as a major amendment as defined by § 101.29) without obtaining prior commission approval by filing FCC Form 415, except in Local Multipoint Distribution Service by filing FCC Form 600.

29. Section 101.63 is amended by revising paragraph (a) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

(a) Each station, except in the Local Multipoint Distribution Services, authorized under this part must be in operation within 18 months from the initial date of grant. Modification of an operational station must be completed within 18 months of the date of grant of the applicable modification request.

* * * * *

30. Section 101.101 is amended by removing the entry for "27,500–29,500" MHz and adding entries for "27,500–28,350," and "29,100–29,250" and revising the entry for "31,000–31,300" MHz and adding LMDS in alphabetical order following the table to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service				Notes
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 24, 25, 74, 78 & 100)	
* * * * *	*	*	*	*	*
27,500–28,350	LMDS				
29,100–29,250	LMDS			SAT	
31,000–31,300	CC-LMDS LTTS	OFS			F/M/TF
* * * * *	*	*	*	*	*

LMDS: Local Multipoint Distribution Service (including non-common carrier and common carrier services)—(Part 101, Subpart L).

* * * * *

31. Section 101.103 is amended by revising paragraph (b) and adding new paragraphs (g) and (h) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(b)(1) Operations in the bands 31,000–31,075 MHz and 31,225–31,300 MHz licensed prior to March 11, 1997, were licensed on an unprotected basis and are subject to harmful interference from similarly licensed operations in that band.

(i) Operations licensed in the Local Multipoint Distribution Service and those operations licensed prior to March 11, 1997, except in the Local Television Transmission Service, operating in these bands are equally protected against harmful interference from each other.

(ii) In the case of operations licensed prior to March 11, 1997, except in the Local Television Transmission Service, that are licensed on a point-to-radius basis, LMDS licensees shall be subject to the protection requirement established in this section in the case of existing links operated by such licensees, and in the case of links added by such licensees in the future in accordance with the terms of their point-to-radius licenses.

(iii) An LMDS licensee may not initiate operations within the point-to-radius area licensed to an operator (other than an operator in the Local Television Transmission Service) prior to March 11, 1997, even if such operator has not initiated operations to the fullest extent of the license. An LMDS licensee, however, may initiate operations at the border of such operator's license area without prior coordination if the LMDS licensee's operations would not cause harmful interference to the other operator's existing operations.

(iv) An operator (other than an operator in the Local Television Transmission Service) licensed on a point-to-radius basis prior to March 11, 1997, may add additional stations within its license area. Such operator shall coordinate with any affected LMDS licensee if its new operations might cause harmful interference to the existing operations of such LMDS licensee.

(v) Operations licensed prior to March 11, 1997, on a point-to-point basis may not be extended or otherwise modified through the addition of point-to-point links. Such operations shall be limited to the use of frequency pairs licensed as of March 11, 1997. Operations licensed in the Local Television Transmission Service as of March 11, 1997, may continue to operate, but such operators may not expand existing operations nor initiate new operations.

(2) Operations in the 31,075–31,225 MHz band licensed prior to March 11, 1997, shall receive no protection against harmful interference from authorized operations in the Local Multipoint Distribution Service in that band.

* * * * *

(g) *Licensees operating in Basic Trading Areas authorized in the Local Multipoint Distribution Service.* (1) When the transmitting facilities in a Basic Trading Area (BTA) are to be operated in the bands 27,500–28,350 MHz; 29,100–29,250 MHz; and 31,000–31,300 MHz and the facilities are located within 20 kilometers of the boundaries of a BTA, each licensee must complete the frequency coordination process of paragraph (d)(2) of this

section with respect to neighboring BTA licensees that may be affected by its operations prior to initiating service. In addition, all licensed transmitting facilities operating in the bands 31,000–31,075 MHz and 31,225–31,300 MHz and located within 20 kilometers of neighboring facilities must complete the frequency coordination process of paragraph (d)(2) of this section with respect to such authorized operations before initiating service.

(2) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the applicant, either electronically or in writing, within the 30-day notification period. Every reasonable effort should be made by all licensees to eliminate all problems and conflicts. If no response to notification is received within 30 days, the licensee will be deemed to have made reasonable efforts to coordinate and commence operation without a response. The beginning of the 30-day period is determined pursuant to paragraph (d)(2)(v) of this section.

(h) *Special requirements for operations in the band 29,100–29,250 MHz.* (1)(i) Local Multipoint Distribution Service (LMDS) receive stations operating on frequencies in the 29,100–29,250 MHz band within a radius of 75 nautical miles of the geographic coordinates provided by a non-GSO-MSS licensee pursuant to § 101.113(c)(2) or (c)(3)(i) (the "feeder link earth station complex protection zone") shall accept any interference caused to them by such earth station complexes and shall not claim protection from such earth station complexes.

(ii) LMDS licensees operating on frequencies in the 29,100–29,250 MHz band outside a feeder link earth station complex protection zone shall cooperate fully and make reasonable efforts to resolve technical problems with the non-GSO MSS licensee to the extent that transmissions from the non-GSO MSS operator's feeder link earth station complex interfere with an LMDS receive station.

(2) No more than 15 days after the release of a public notice announcing the commencement of LMDS auctions, feeder link earth station complexes to be licensed pursuant to § 25.257 of this chapter shall be specified by a set of geographic coordinates in accordance with the following requirements: no feeder link earth station complex may be located in the top eight (8) metropolitan statistical areas (MSAs),

ranked by population, as defined by the Office of Management and Budget as of June 1993, using estimated populations as of December 1992; two (2) complexes may be located in MSAs 9 through 25, one of which must be Phoenix, AZ (for a complex at Chandler, AZ); two (2) complexes may be located in MSAs 26 to 50; three (3) complexes may be located in MSAs 51 to 100, one of which must be Honolulu, Hawaii (for a complex at Waimea); and the three (3) remaining complexes must be located at least 75 nautical miles from the borders of the 100 largest MSAs or in any MSA not included in the 100 largest MSAs. Any location allotted for one range of MSAs may be taken from an MSA below that range.

(3)(i) Any non-GSO MSS licensee may at any time specify sets of geographic coordinates for feeder link earth station complexes with each earth station contained therein to be located at least 75 nautical miles from the border of the 100 largest MSAs.

(ii) For purposes of paragraph (h)(3)(i) of this section, non-GSO MSS feeder link earth station complexes shall be entitled to accommodation only if the affected non-GSO MSS licensee preapplies to the Commission for a feeder link earth station complex or certifies to the Commission within sixty days of receiving a copy of an LMDS application that it intends to file an application for a feeder link earth station complex within six months of the date of receipt of the LMDS application.

(iii) If said non-GSO MSS licensee application is filed later than six months after certification of the Commission, the LMDS and non-GSO MSS entities shall still cooperate fully and make reasonable efforts to resolve technical problems, but the LMDS licensee shall not be obligated to re-engineer its proposal or make changes to its system.

(4) LMDS licensees or applicants proposing to operate hub stations on frequencies in the 29,100–29,250 MHz band at locations outside of the 100 largest MSAs or within a distance of 150 nautical miles from a set of geographic coordinates specified under paragraphs (h)(2) or (h)(3)(i) of this section shall serve copies of their applications on all non-GSO MSS applicants, permittees or licensees meeting the criteria specified in § 25.257(a). Non-GSO MSS licensees or applicants shall serve copies of their feeder link earth station applications, after the LMDS auction, on any LMDS applicant or licensee within a distance of 150 nautical miles from the geographic coordinates that it specified under § 101.113(c)(2) or (c)(3)(i). Any necessary coordination shall commence

upon notification by the party receiving an application to the party who filed the application. The results of any such coordination shall be reported to the Commission within sixty days. The non-GSO MSS earth station licensee shall

also provide all such LMDS licensees with a copy of its channel plan.

32. Section 101.107 is amended by removing the entry for "19,700 to 40,000" MHz, adding the entries for "19,700 to 27,500, 27,500 to 28,350,

29,100 to 29,250, 31,000 to 31,075, 31,075 to 31,225, 31,225 to 31,300 and 31,300 to 40,000" and adding a footnote 8 to read as follows:

§ 101.107 Frequency tolerance.

* * * * *

Frequency (MHz)	Frequency tolerance (percent)		
	All fixed and Base stations	Mobile stations over 3 Watts	Mobile stations 3 Watts or less
* * * * *			
19,700 to 27,500 ⁶	0.03	.....	.....
27,500 to 28,350	0.001	.....	.....
29,100 to 29,250	0.001	.....	.....
31,000 to 31,075 ⁸	0.001	.....	.....
31,075 to 31,225 ⁸	0.001	.....	.....
31,225 to 31,300 ⁸	0.001	.....	.....
31,300 to 40,000 ⁶	0.03	.....	.....
* * * * *			

⁶For stations authorized prior to March 11, 1997, transmitter frequency tolerance shall not exceed 0.03 percent.

33. Section 101.109(c) is amended by removing the entry "31,000 to 31,300" and adding the entries for "31,000 to 31,075, 31,075 to 31,225, and 31,225 to 31,300" in numerical order to read as follows:

§ 101.109 Bandwidth.

* * * * *						
(c) * * *						
Frequency band (MHz)						Maximum authorized bandwidth
* * * * *						
31,000 to 31,075						75 MHz
31,075 to 31,225						150 MHz
31,225 to 31,300						75 MHz
* * * * *						

34. Section 101.113(a) is amended by removing the entry "31,000 to 31,300" MHz and adding entries for "31,000 to 31,075, 31,075–31,225, and 31,225 to 31,300," removing the first footnote 7, revising the second footnote 7, revising footnote 8 and adding footnote 9 to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable EIRP ^{1, 2}	
	Fixed (dBW)	Mobile (dBW)
* * * * *		
	+30 dBW/MHz	
27,500 to 28,350 ⁹	(7)	
29,100 to 29,250		
31,000 to 31,075 ^{8, 9}	30 dBW/MHz	30 dBW/MHz
31,075 to 31,225 ^{8, 9}	30 dBW/MHz	30 dBW/MHz
31,225 to 31,300 ^{8, 9}	30 dBW/MHz	30 dBW/MHz
* * * * *		
* * * * *		

⁷ See § 101.113(c).

⁸For stations authorized prior to March 11, 1997, transmitter output power shall not exceed 0.05 watt.

⁹For subscriber transceivers authorized in these bands, the EIRP shall not exceed 55dBW or 42 dBW/MHz.

* * * * *

35. Section 101.147 is amended by revising paragraph (a), removing the entries for "27,500–29,500 MHz" and adding entries for 27,500–28,350 MHz (16) and 29,100–29,250 MHz (16), revising the entry for "31,000–31,300 MHz" (16), revising note 16 in paragraph (a), removing paragraph (x), redesignating paragraphs (t) through (w) as paragraphs (u) through (x), adding a new paragraph (t), and revising newly designated paragraph (u), to read as follows:

§ 101.147 Frequency assignments

(a) Frequencies in the following bands are available for assignment for fixed microwave services.

* * * * *

27,500–28,350 MHz (16)
29,100–29,250 MHz (5), (16)
31,000–31,300 MHz (16)
* * * * *

(5) Frequencies in this band are shared with stations in the fixed-satellite service.

* * * * *

(16) As of June 30, 1997, frequencies in these bands are available for assignment only to LMDS radio stations. Stations initially authorized prior to that date may continue to operate within the existing terms of the outstanding licenses.

* * * * *

(t) 27,500–28,350; 29,100–29,250; 31,000–31,300 MHz. These frequencies are available for LMDS systems. Each assignment will be made on a BTA service area basis, and the assigned spectrum may be subdivided as desired by the licensee.

(u) 31,000–31,300 MHz. Stations licensed in this band prior to March 11, 1997, may continue their authorized operations, subject to license renewal, on the condition that harmful interference will not be caused to LMDS operations licensed in this band after June 30, 1997. In the sub-bands 31,000–31,075 and 31,225–31,300 MHz, stations initially licensed prior to March 11, 1997, except in LTTS, and LMDS operations authorized after June 30, 1997, are equally protected against harmful interference from each other in accordance with the provisions of § 101.103(b). For stations, except in LTTS, permitted to relocate to these sub-bands, the following paired frequencies are available:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
(1) 25 MHz Authorized Bandwidth Channels	
31,012.5	31,237.5
31,037.5	31,262.5
31,062.5	31,287.5

Transmit (receive) (MHz)	Receive (transmit) (MHz)
(2) 75 MHz Authorized Bandwidth Channel	
31,037.5	31,275.0

* * * * *

36. Section 101.305 is amended by revising paragraphs (a) through (c) to read as follows:

§ 101.305 Discontinuance, reduction, or impairment of service.

(a) If the public communication service provided by a station in the Common Carrier Radio Services and the Local Multipoint Distribution Service is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee must promptly notify the Commission, in writing, at Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325. In every such case, the licensee must furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof must be given in writing to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania, 17325.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee must promptly send the station license to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation; except that station licensees in the Local Multipoint Distribution Service need not surrender the license for cancellation if the discontinuance is a result of a change of status by the licensee from common carrier to non-common carrier pursuant to § 101.61.

(c) Any licensee not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community must give written notification to the Commission

within 7 days thereof. In the event of permanent discontinuance of service, the station licensee must promptly send the station license to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation; except that station licensees in the Local Multipoint Distribution Service need not surrender the license for cancellation if the discontinuance is a result of a change of status by the licensee from non-common carrier to common carrier pursuant to § 101.61.

* * * * *

37. Section 101.311 is revised to read as follows:

§ 101.311 Equal employment opportunities.

Equal opportunities in employment must be afforded by all common carrier licensees and all Local Multipoint Distribution Service licensees in accordance with the provisions of § 21.307.

38. Section 101.803 is amended by revising note (7) of paragraph (a), revising note (9) of paragraph (d), removing paragraph (e), and redesignating paragraphs (f), (g), and (h) as (e), (f), and (g), to read as follows:

§ 101.803 Frequencies.

(a) * * *

(7) As of June 30, 1997, frequencies in these band only are available for assignment to LMDS radio stations. Stations authorized prior to that date may continue to operate within the existing terms of the outstanding licenses, subject to renewal.

* * * * *

(d) * * *

(9) As of June 30, 1997, frequencies in these band only are available for assignment to LMDS radio stations. Stations authorized prior to that date may continue to operate within the existing terms of the outstanding licenses, subject to renewal.

* * * * *

39. Subpart K is added and reserved in part 101 and Subpart L is added, reading as follows:

Subpart L—Local Multipoint Distribution Service

Sec.

- 101.1001 Eligibility.
101.1003 LMDS eligibility restrictions for incumbent LECs and cable companies.
101.1005 Frequencies available.
101.1007 Geographic service areas and number of licenses.
101.1009 System operations.
101.1011 Construction requirements and criteria for renewal expectancy.

- 101.1013 Permissible communications services.
 101.1015 Application form and contents.
 101.1017 Requesting regulatory status.

§ 101.1001 Eligibility.

Any entity, other than one precluded by § 101.7 and by § 101.1003, is eligible for authorization to provide Local Multipoint Distribution Service (LMDS) under this subpart. Authorization will be granted upon proper application filed under the rules in this part.

§ 101.1003 LMDS eligibility restrictions for incumbent LECs and cable companies.

(a) *Eligibility for LMDS license.* Except as provided in paragraph (b) of this section, no incumbent LEC or incumbent cable company, as defined in paragraph (c) of this section, nor any entity owning an attributable interest in an incumbent LEC or incumbent cable company, shall have an attributable interest in an LMDS license whose geographic service area significantly overlaps such incumbent's authorized or franchised service area.

(1) *Termination of restriction.* This restriction shall terminate three years following June 30, 1997 unless the Commission extends its applicability based on a determination that incumbent LECs or incumbent cable companies continue to have substantial market power in the provision of local telephony or cable television services.

(2) *Waiver of restriction.* Upon completion of the initial award of LMDS licenses, an incumbent LEC or incumbent cable company may petition for a waiver of the restriction on eligibility based upon a showing that the petitioner no longer has market power in its authorized or franchised service area as the result of the entry of new competitors, other than an LMDS licensee, into such service area.

(b) *Exception to eligibility restriction.* The restriction set forth in paragraph (a) of this section shall not apply to any license for the 31,000–31,075 megahertz and 31,225–31,300 megahertz bands of LMDS spectrum.

(c) *Incumbent LECs and cable companies defined.* The terms incumbent LEC and incumbent cable company shall be defined as follows:

(1) *Incumbent LEC.* The term incumbent local exchange carrier or incumbent LEC shall be defined, in accordance with section 251(h) of the Communications Act, to mean, with respect to an area, that:

(i) On February 8, 1996, the LEC provided telephone exchange service in such area and was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this chapter; or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (c)(1)(i) of this section; or

(iii) Is an entity, or a member of a class or category of entities, that the Commission has determined under section 251(h)(2) of the Communications Act to treat as a local exchange carrier.

(2) *Incumbent cable company.* The term incumbent cable company means a company that is franchised to provide cable service and is not subject to effective competition under the following definition of effective competition in section 623(l) of the Communications Act:

(i) Fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; or

(ii) The franchise area is:

(A) Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(B) The number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or

(iii) A multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households of that franchise area; or

(iv) A local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(d) *Significant overlap with authorized or franchised service area.* For purposes of paragraph (a) of this section, a significant overlap of an incumbent LEC's or incumbent cable company's authorized or franchised service area occurs when at least 10 percent of the population of the LMDS licensed service area, as determined by the 1990 census figures for the counties

contained in such service area, is within the authorized or franchised service area.

(e) *Definition of attributable interest.* For purposes of paragraph (a) of this section, an entity shall be considered to have an attributable interest in an incumbent LEC, incumbent cable company, or LMDS licensee pursuant to the following criteria:

(1) A controlling interest shall constitute an attributable interest. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the entity, in whatever manner exercised.

(2) Partnership and similar ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock or outstanding voting stock of an entity.

(3) Stock interests held in trust that exceed the limit set forth in paragraph (e)(2) of this section shall constitute an attributable interest of any person who holds or shares the power to vote such stock, of any person who has the sole power to sell such stock, and, in the case of stock held in trust, of any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust shall constitute an attributable interest of such grantor or beneficiary, as appropriate.

(4) Non-voting stock shall constitute an attributable interest in the issuing entity if it exceeds the limit set forth in paragraph (e)(2) of this section.

(5) Debt and interests such as warrants and convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not constitute attributable interests unless and until conversion is effected.

(6) Limited partnership interests amounting to 20 percent or more, calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses, shall constitute an attributable interest of each such limited partner.

(7) Officers and directors of an incumbent LEC or incumbent cable company, an LMDS licensee, or an entity that controls such incumbent LEC, incumbent cable company, or LMDS licensee, shall be considered to have an attributable interest in such incumbent LEC, incumbent cable company, or LMDS licensee.

(8) Ownership interests that are held indirectly by any party through one or

more intervening corporations or other entities shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that, if the ownership for any interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(9) Any person who manages the operations of an incumbent LEC or incumbent cable company or an LMDS licensee pursuant to a management agreement shall be considered to have an attributable interest in such incumbent LEC, incumbent cable company or LMDS licensee, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(i) The nature or types of services offered by such entity;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(10) Any person or its affiliate who enters into a joint marketing arrangement with an incumbent LEC, an incumbent cable company, an LMDS licensee, or an affiliate of such entity, shall be considered to have an attributable interest in such incumbent LEC, incumbent cable company, LMDS licensee, or affiliate, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine:

(i) The nature or types of services offered by such entity;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(f) *Divestiture.* Any incumbent LEC or incumbent cable company, or any entity owning an attributable interest in an incumbent LEC or incumbent cable company, that would otherwise be barred from participating in an LMDS auction by the eligibility restriction in paragraph (a) of this section, may be a party to an LMDS application (i.e., have an attributable interest in the applicant), and such applicant will be eligible for an LMDS license, pursuant to the divestiture procedures set forth in paragraphs (f)(1) through (f)(6) of this section.

(1) Divestiture shall be limited to the following prescribed means:

(i) An LMDS applicant holding an attributable interest in an incumbent LEC or incumbent cable company may

divest such interest in the incumbent LEC or cable company.

(ii) Other LMDS applicants disqualified under paragraph (a) of this section, will be permitted to:

(A) Partition and divest that portion of the existing authorized or franchised service area that causes it to exceed the overlap restriction in paragraph (d) of this section, subject to applicable regulations of state and local governments; or

(B) Partition and divest that portion of the LMDS geographic service area that exceeds the overlap restriction in paragraph (d) of this section.

(iii) Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the LMDS applicant has no interest in or control of the trustee and the trustee may dispose of the license as it sees fit.

(2) The LMDS applicant shall certify as an exhibit to its short form application that it and all parties to the application will come into compliance with paragraph (a) of this section.

(3) If such LMDS applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the eligibility restrictions in paragraph (a) of this section.

(4) If such an LMDS applicant is otherwise qualified, its application will be granted subject to a condition that the applicant shall come into compliance with the eligibility restrictions in paragraph (a) of this section, within ninety (90) days of final grant of such LMDS license.

(5) An LMDS applicant will be considered to have come into compliance with paragraph (a) of this section if:

(i) In the case of the divestiture of a portion of an LMDS license, it has submitted to the Commission an application for license assignment or transfer of control of the requisite portion of the LMDS geographic service area.

(ii) In all other cases, it has submitted to the Commission a signed certification that it has come into compliance with paragraph (a) of this section by the following means, identified in such certification:

(A) By divestiture of a disqualifying interest in an incumbent LEC or incumbent cable company, identified in terms of the interest owned, the owner of such interest (and, if such owner is not the applicant itself, the relationship of the owner to the applicant), the name of the party to whom such interest has

been divested, and the date such divestiture was executed; or

(B) By divestiture of the requisite portion of the incumbent LEC's or incumbent cable company's existing authorized or franchised service area, identified in terms of the name of the party to whom such interest has been divested, the date such divestiture was executed, the name of any regulatory agency that must approve such divestiture, and the date on which an application was filed for this purpose with the regulatory agency.

(6) If no such certification or application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may consider the short form divestiture statement to be material, bad faith misrepresentations and shall invoke the condition on the initial license, cancelling or rescinding it automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate.

Note to § 101.1003: Waivers of § 101.1003(e) may be granted upon an affirmative showing:

1. That the interest holder has less than a 50 percent voting interest in the licensee and there is an unaffiliated single holder of a 50 percent or greater voting interest;

2. That the interest holder is not likely to affect the local market in an anticompetitive manner;

3. That the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and

4. That grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

§ 101.1005 Frequencies available.

(a) The following frequencies are available for assignment to LMDS in two license blocks:

Block A of 1,150 MHz

27,500–28,350 MHz
29,100–29,250 MHz
31,075–31,225 MHz

Block B of 150 MHz

31,000–31,075 MHz
31,225–31,300 MHz

(b) In Block A licenses, the frequencies are authorized as follows:

(1) 27,500–28,350 MHz is authorized on a primary protected basis and is shared with Fixed Satellite Service (FSS) systems.

(2) 29,100–29,250 MHz is shared on a co-primary basis with feeder links for non-geostationary orbit Mobile Satellite Service (NGSO/MSS) systems in the band and is limited to LMDS hub-to-

subscriber transmissions, as provided in § 25.257 and § 101.103(h).

(3) 31,075–31,225 MHz is authorized on a primary protected basis and is shared with private microwave point-to-point systems licensed prior to March 11, 1997, as provided in § 101.103(b).

(c) In Block B licenses, the frequencies are authorized as follows:

(1) On a primary protected basis if LMDS shares the frequencies with systems licensed as Local Television Transmission Service (LTTS) licensed prior to March 11, 1997, as provided in § 101.103(b).

(2) On a co-equal basis with systems not licensed as LTTS prior to March 11, 1997, as provided in § 101.103(g).

§ 101.1007 Geographic service areas and number of licenses.

LMDS service areas are Basic Trading Areas (BTAs) as defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39, that identifies 487 BTAs based on the 50 States and as defined to include the BTA-like areas of the United States Virgin Islands, American Samoa, Guam, Mayaguez/Aguadilla-Ponce, Puerto Rico, San Juan, Puerto Rico, and the Commonwealth of Northern Marinas, for a total of 493 BTAs.

§ 101.1009 System operations.

(a) The licensee may construct and operate any number of fixed stations anywhere within the area authorized by the license without prior authorization, except as follows:

(1) A station would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter.

(iii) The station would affect the radio quiet zones under § 101.123.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(b) Whenever a licensee constructs or makes system changes as described in paragraph (a) of this section, the licensee is required to notify the Commission within 30 days of the change under § 101.61 and include a statement of the technical parameters of the changed station.

§ 101.1011 Construction requirements and criteria for renewal expectancy.

(a) LMDS licensees must make a showing of “substantial service” in their license area within ten years of being

licensed. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(b) A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, that is the most important comparative factor to be considered in the proceeding as long as the applicant's past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided “substantial” service during its past license term; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(c) In order to establish its right to a renewal expectancy, an LMDS renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its LMDS system; and

(4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(d) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

§ 101.1013 Permissible communications services.

(a) Authorizations for stations in the Local Multipoint Distribution Service will be granted to provide services on a common carrier basis or a non-common carrier basis or on both a common carrier and non-common carrier basis in a single authorization.

(b) Stations may render any kind of communications service consistent with the Commission's rules and the

regulatory status of the station to provide services on a common carrier or non-common carrier basis.

(c) An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status required to provide a specific communications service.

§ 101.1015 Application form and contents.

(a) Applications for initial authorization are filed on FCC Form 175 in accordance with Subpart M of this part, and part 1 of this chapter, subpart Q. FCC Form 600 is submitted subsequently either by the winning bidder, if an auction is held to decide among two or more mutually exclusive applications, or, in cases of no mutual exclusivity, by the sole applicant. Applications to amend pending applications and to modify licenses are filed on FCC Form 600.

(b) *Foreign ownership information.* All LMDS applicants will provide the information requested on FCC Form 600 to address all of the eligibility requirements in § 101.7. All licensees will keep the information updated.

§ 101.1017 Requesting regulatory status.

(a) *Initial applications.* An applicant will specify on FCC Form 600 if it is requesting authorization to provide services on a common carrier basis, a non-common carrier basis, or on both a common carrier and non-common carrier basis.

(b) *Amendment of pending applications.* (1) Any pending application may be amended to:

(i) Change the carrier status requested, or

(ii) Add to the pending request in order to obtain both common carrier and non-common carrier status in a single license.

(2) Amendments to change, or add to, the carrier status in a pending application are minor amendments filed under § 101.29.

(c) *Modification of license.* (1) A licensee may modify a license to:

(i) Change the carrier status authorized, or

(ii) Add to the status authorized in order to obtain both common carrier and non-common carrier status in a single license.

(2) Applications to change, or add to, the carrier status in a license are modifications not requiring prior Commission authorization filed under § 101.61. If the change results in the discontinuance, reduction, or impairment of an existing service, the licensee is also governed by § 101.305(b) or (c) and submits the application under § 101.61 in conformance with the time

frames and requirements of § 101.305(b) or (c).

40. Subpart M consisting of §§ 101.1101 through 101.1112 is added to part 101 to read as follows:

Subpart M—Competitive Bidding Procedures for LMDS

Sec.

- 101.1101 LMDS service subject to competitive bidding.
- 101.1102 Competitive bidding design for LMDS.
- 101.1103 Competitive bidding mechanisms.
- 101.1104 Bidding application (FCC Forms 175 and 175-S).
- 101.1105 Submission of payments.
- 101.1106 Long-form application (FCC Form 600).
- 101.1107 Bidding credits for small businesses and entities with average gross revenues of not more than \$75 million.
- 101.1108 Installment payments for licenses won by small businesses and entities with average gross revenues of not more than \$75 million.
- 101.1109 Certifications, disclosures, records maintenance and audits.
- 101.1110 Petitions to deny.
- 101.1111 Procedures for partitioned licenses.
- 101.1112 Definitions.

§ 101.1101 LMDS service subject to competitive bidding.

Mutually exclusive initial applications for LMDS licenses are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 101.1102 Competitive bidding design for LMDS.

The Commission will employ a simultaneous multiple round auction design when choosing from among mutually exclusive initial applications to provide LMDS, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

§ 101.1103 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which LMDS licenses are auctioned.

(b) *Grouping.* The Commission will determine which licenses will be auctioned simultaneously or in combination based on interdependency and administrative circumstances.

(c) *Minimum bid increments.* The Commission may, by public announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping rules.* The Commission may establish stopping rules before or during an auction in order to terminate the auction within a reasonable time.

(e) *Activity rules.* The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder may request waivers of such rule during the auction. The Commission may, by public announcement either before or during the auction, specify or vary the number of waivers available to each bidder.

(f) *Bid withdrawal, default and disqualification payments.* The Commission will impose payments on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction terminates, or who are disqualified. Payments will be calculated as set forth in §§ 1.2104(g) and 1.2109 of this chapter. When the amount of such a payment cannot be determined, a deposit of up to 20 percent of the amount bid on the license will be required.

(g) *Tie bids.* Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

§ 101.1104 Bidding application (FCC Forms 175 and 175-S).

Each applicant to participate in competitive bidding for LMDS licenses must submit an application (FCC Forms 175 and 175-S) pursuant to the provisions of § 1.2105 of this chapter.

§ 101.1105 Submission of payments.

(a) Each applicant to participate in an LMDS auction will be required to submit an upfront payment in accordance with § 1.2106 of this chapter as announced by the Wireless Telecommunications Bureau by Public Notice.

(b) Winning bidders in LMDS auctions, except those businesses meeting the definition of small business or qualifying as a business with average gross revenues for the preceding three years of not more than \$75 million under § 101.1112, must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 20 percent of their winning bids within ten business days following the release of a Public Notice announcing the close of the auction. Winning bidders, except those qualifying for installment payments, must pay the full balance of their winning bids within ten business days

following the release of a Public Notice that the Commission is prepared to award the licenses.

(c) Winning bidders in LMDS auctions that meet the definition of small business or businesses with average gross revenues for the preceding three years of not more than \$75 million under § 101.1112 must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 10 percent of their winning bids within ten business days following the release of a Public Notice announcing the close of the auction, and up to 20 percent of their winning bids within ten business days of the release of a Public Notice that the Commission is prepared to award the licenses. The remaining 80 percent of the purchase price will then be subject to the installment financing provisions of § 101.1108.

§ 101.1106 Long-form application (FCC Form 600).

Each successful bidder for an LMDS license must submit a long-form application (FCC Form 600) within ten business days after being notified by Public Notice that it is the winning bidder. Applications for LMDS on FCC Form 600 must be submitted in accordance with § 1.2107 of this chapter, all applicable procedures set forth in the rules in this part, and any applicable Public Notices that the Commission may issue in connection with an auction. After an auction, the Commission will not accept long-form applications for LMDS licenses from anyone other than the auction winners and parties seeking partitioned licenses pursuant to agreements with auction winners under § 101.1111 of this chapter.

§ 101.1107 Bidding credits for small businesses and entities with average gross revenues of not more than \$75 million.

(a) A winning bidder that qualifies as a small business pursuant to § 101.1112 may use a bidding credit of 25 percent to lower the cost of its winning bid.

(b) A winning bidder that has average gross revenues for the preceding three years of more than \$40 million but not more than \$75 million pursuant to § 101.1112 may use a bidding credit of 15 percent to lower the cost of its winning bid.

(c) The bidding credits referenced in paragraphs (a) and (b) of this section are not cumulative.

(d) *Unjust enrichment.* (1) A licensee that utilizes a bidding credit, and that during the initial license term seeks to assign or transfer control of a license to an entity that does not meet the

eligibility criteria for a bidding credit, will be required to reimburse the U.S. government for the amount of the bidding credit plus interest at the rate imposed for installment financing at the time the license was awarded, as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest at the rate imposed for installment financing at the time the license was awarded, must be paid to the U.S. government as a condition of Commission approval of the assignment or transfer. If, within the initial license term, a licensee that utilizes a bidding credit seeks to make any ownership change that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding credit for which the restructured licensee would qualify), plus interest at the rate imposed for installment financing at the time the license was awarded, must be paid to the U.S. government as a condition of Commission approval of the ownership change.

(2) The amount of payments made pursuant to paragraph (d)(1) of this section will be reduced over time as follows:

(i) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or, in the case of small businesses transferring to businesses having average gross revenues of more than \$40 million but not more than \$75 million, 100 percent of the difference between the bidding credit received by the former and the bidding credit for which the latter is eligible);

(ii) In year three of the license term the payment will be 75 percent;

(iii) In year four the payment will be 50 percent; and

(iv) In year five the payment will be 25 percent, after which there will be no required payment.

§ 101.1108 Installment payments for licenses won by small businesses and entities with average gross revenues of not more than \$75 million.

(a) A winning bidder that qualifies as a small business pursuant to § 101.1112 must submit to the Commission a down

payment of 20 percent of the net auction price for the license pursuant to § 101.1105(c) and may pay the remaining 80 percent of the net auction price for the license in installment payments over the term of the license. Interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent. Payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(b) A winning bidder that has average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million pursuant to § 101.1112 must submit to the Commission a down payment of 20 percent of the net auction price for the license pursuant to § 101.1105(c) and may pay the remaining 80 percent of the net auction price for the license in installment payments. Interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent. Payment of interest and principal shall be amortized over the ten years of the license term.

(c) *Unjust enrichment.* A licensee that utilizes installment financing and that seeks to assign or transfer control of a license to an entity not meeting the eligibility standards for installment payments must pay not only unpaid principal but also any unpaid interest accrued through the date of assignment or transfer as a condition of Commission approval. If a licensee that utilizes installment financing seeks to assign or transfer control of a license to an entity qualifying for a less favorable installment plan, its payment plan will be adjusted to reflect the assignee's or transferee's eligibility status as a condition of Commission approval of the assignment or transfer. If a licensee that utilizes installment financing seeks to change its ownership structure in such a way that would result in a loss of eligibility for installment payments, it must pay the unpaid principal and accrued interest as a condition of Commission approval of the change. If such a change in ownership would result in the licensee qualifying for a less favorable installment plan, it must adjust its payment plan to reflect its new eligibility status as a condition of Commission approval. A licensee may not change its payment plan to a more favorable plan.

(d) *Late installment payment.* Any licensee that submits a scheduled installment payment more than fifteen days late will be charged a late payment

fee equal to five percent of the amount of the past due payment.

(e) Payments will be applied in the following order: late charges, interest charges, principal payments.

§ 101.1109 Certifications, disclosures, records maintenance and audits.

(a) *Short-form applications: certifications and disclosure.* In addition to certifications and disclosures required in part 1, subpart Q, of this chapter, each applicant for an LMDS license which qualifies as a small business or a business with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million shall append the following information as an exhibit to its FCC Form 175:

(1) The identity of the applicant's affiliates and controlling principals; and

(2) The applicant's gross revenues, computed in accordance with § 101.1112.

(b) *Long-form applications: certifications and disclosure.* In addition to the requirements in § 1.2107 of this chapter, each applicant submitting a long-form application for an LMDS license and qualifying as a small business or a business with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million shall, in an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 101.1112, for each of the following: the applicant, the applicant's affiliates, the applicant's controlling principals, and, if a consortium of small businesses or businesses with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million, the members of the joint venture;

(2) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business or a business with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million, including the establishment of *de facto* and *de jure* control; such agreements and instruments include, but are not limited to, articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements including letters of intent, oral or written; and

(3) List and summarize any investor protection agreements, including rights

of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(c) *Records maintenance.* All winning bidders qualifying as small businesses or businesses with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any document necessary to establish eligibility as a small business or business with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(d) *Audits.* (1) Applicants and licensees claiming eligibility as a small business or business with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million shall be subject to audits by the Commission. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed LMDS service, and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

§ 101.1110 Petitions to deny.

Procedures regarding petitions to deny long-form applications in the LMDS service will be governed by § 1.2108 (b) through (d) of this chapter.

§ 101.1111 Procedures for partitioned licenses.

(a) LMDS licensees may apply to partition their licensed geographic

service area or disaggregate their licensed spectrum.

(b) If partitioned licenses or disaggregated licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this chapter shall be followed by the applicant, which must disclose as part of its short-form application all parties to agreement(s) with or among entities to partition or disaggregate the license pursuant to this section, if won at auction. See § 1.2105(a)(2)(viii).

(2) Each entity that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area or spectrum together with the application for the remainder of the BTA or spectrum filed by the auction winner.

(c) If the partitioned or disaggregated license is being applied for as a partial assignment of the license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 101.115(f).

§ 101.1112 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1101 through 101.1112, unless otherwise specified in those sections.

(b) *Small business; consortium.* (1) A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$40 million.

(2) For purposes of determining whether an entity meets the definition of small business or qualifies as a business with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million, the gross revenues of the applicant, its affiliates and controlling principals shall be considered on a cumulative basis and aggregated.

(3) *Consortium.* A consortium of small businesses, or a consortium of businesses with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million, is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business or business with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million. Each individual

member must establish its eligibility as a small business or business with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million. Where an applicant (or licensee) is a consortium of small businesses or a consortium of businesses with average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million, the gross revenues of each business shall not be aggregated.

(c) *Gross revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (FCC Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(d) *Affiliate—(1) Basis for affiliation.* An individual or entity is an affiliate of an applicant if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties who also control or have the power to control the applicant, or

(iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.* (i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (d)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to

block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer, or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions if the voting stock is so widely distributed that no effective control can be established.

Example for paragraph (d)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are controlling principals of the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

(i) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father-or mother-in-law, son-or daughter-in-law, brother-or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half-brother or -sister. This presumption may be rebutted by showing that:

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (d)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has a controlling interest in an LMDS license application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.* (i) An applicant is presumed to control or have the power to control a concern if she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (d)(5). If company B holds an option to purchase a controlling interest in company A, who holds a controlling interest in an LMDS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (d)(5). If a large company, BigCo, holds 70 percent (70 of 100

outstanding shares) of the voting stock of company A, who holds a controlling interest in an LMDS license application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule, which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (d)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors or the management (or both) of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space, employees, or other facilities (or any combination of the foregoing) with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one

concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns or individuals (or both), with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

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BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-267; FCC 97-68]

Implementation of the AM Expanded Band Allotment Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In Implementation of the AM Expanded Band Allotment Plan, FCC 97-68, the Federal Communications Commission granted in part and denied in part petitions for reconsideration of Comments in Response to Reconsideration of Implementation of the AM Expanded Band and Allotment Plan, FCC 96-113, April 18, 1996 (61 FR 16878), and Public Notice, Mass Media Bureau Announces Revised Expanded AM Broadcast Band Improvement Factors and Allotment Plan, DA 96-408 (released March 22, 1996). By this action the Commission rescinds the second allotment plan for the AM expanded band, i.e., 1605-1705 kHz, modifies the frequency preclusion program, and eliminates software and coding errors in the frequency preclusion and allotment computer programs. This action was taken to

ensure that the stations assigned expanded band frequencies would protect existing stations, conform to international agreements, and provide interference-free reception within their service areas.

EFFECTIVE DATE: March 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Peter H. Doyle, Audio Services Division, Mass Media Bureau, (202) 418-2625.

SUPPLEMENTARY INFORMATION:

Concurrent with the release of Implementation of the AM Expanded Band Allotment Plan, the Commission's Mass Media Bureau released a Public Notice announcing a revised eighty-eight station Expanded Band Allotment Plan in the frequency band between 1605 and 1705 kHz. The Revised Expanded Band Allotment Plan identifies stations eligible for specific allotments. See Public Notice DA 97-537, released March 17, 1997. Such licensees will also be notified individually by letter. Identified stations are afforded until June 16, 1997 to file an application for construction permit on the allotted channel. Applications will be subject to petitions to deny but not to competing applications. Each Expanded Band permittee, following grant of construction permit applications and construction of authorized facilities, will be required to file an application for covering license on FCC Form 302. Expanded Band licensees will receive authorizations permitting dual frequency operations for a period not to exceed five years. The full text of the Implementation of the AM Expanded Band Allotment Plan, FCC 97-68, adopted February 27, 1997 and released March 17, 1997 is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. (See MM Docket 87-267). The complete text of this order may also be purchased from the Commission's copy contractor, International Transcription Service (ITS), 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-10844 Filed 4-28-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970226037-7094-02; I.D. 022197F]

RIN 0648-AJ39

Fisheries of the Exclusive Economic Zone Off Alaska; Management Measures to Reduce Seabird Bycatch in the Hook-and-Line Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to require operators of hook-and-line vessels fishing for groundfish in the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA), and operators of hook-and-line vessels that are required to obtain a Federal permit and are fishing for groundfish in Alaskan waters adjacent to the BSAI and to the GOA, to conduct fishing operations in a specified manner, and to employ specified bird avoidance techniques to reduce seabird bycatch and incidental seabird mortality. This measure is necessary to mitigate hook-and-line fishery interactions with the short-tailed albatross, an endangered species protected under the Endangered Species Act (ESA), and other seabird species. This measure is intended to accomplish the objectives of the ESA and of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs) with respect to the management of the GOA groundfish fishery and the BSAI groundfish fishery and the marine environment.

EFFECTIVE DATE: May 29, 1997.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the final rule may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501-2252; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907-586-7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the GOA and the BSAI in the Exclusive Economic Zone

are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*; Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

Recent takes of the endangered short-tailed albatross (*Diomedea albatrus*) (two in 1995 and one in 1996) in hook-and-line groundfish fisheries in the BSAI and the GOA highlight a seabird bycatch problem. A recently amended biological opinion issued in an ESA section 7 consultation on the GOA and BSAI groundfish fisheries includes an incidental take statement for the take of four birds in 2 years (USFWS, 1997). If the take during 1997 and 1998 exceeds four, NMFS immediately must reinitiate section 7 consultation and review with the U.S. Fish & Wildlife Service (USFWS) the need for possible modification of the reasonable and prudent measures established to minimize take of the short-tailed albatross.

At its December 1996 meeting, the Council voted unanimously to recommend that all hook-and-line vessels fishing for groundfish in the GOA and BSAI must use certain seabird bycatch avoidance devices intended to reduce the incidental mortality of the short-tailed albatross and other seabird species. The Council reaffirmed its recommendation at its February 1997 meeting. At its April 1997 meeting, the Council is scheduled to take action to expand seabird avoidance measures to the Pacific halibut hook-and-line fishery in Convention waters in and off Alaska. Depending on Council action, rulemaking to require seabird avoidance measures may be initiated separately for the halibut fishery.

Background information on seabird avoidance measures established for the GOA and BSAI hook-and-line fisheries for groundfish may be found in the preamble to the proposed rule published in the **Federal Register** on March 5, 1997 (62 FR 10016), and in the EA/RIR/FRFA prepared for this action. Public comment was invited through March 20, 1997. Thirty-three letters of comments were received and are summarized and responded to below in the "Response to Comments" section. Two letters of comment were received after the close of the public comment

period but did not address any new issues.

Change From the Proposed Rule

The proposed rule at § 679.24(e)(2)(ii) would have required the avoidance of offal discharge to the extent practicable when setting or hauling hook-and-line gear. If the discharge of waste was unavoidable, this activity would have been required to occur aft of the hauling station or on the opposite side of the vessel to that where gear was set or hauled. Comment on the proposed rule received from the Alaskan fishing industry strongly questioned the logic of avoiding the discharge of offal when setting gear, because waste discharge distracts birds from baited hooks and currently is employed by the fishing fleet as a bird avoidance technique. Furthermore, most vessels using hook-and-line gear typically set gear from the stern, but conduct hauling activity at a different site on either the starboard or port side of the vessel. The constraints in the proposed rule on where discharge may occur from a vessel does not take into account that setting frequently occurs off the stern of the vessel.

In response to this comment, NMFS has revised the proposed rule at § 679.24(e)(2)(ii) to require that any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station.

Seabird Bycatch Avoidance Gear and Methods

After considering the public comments received, NMFS is implementing management measures designed to reduce the incidental mortality of seabirds. These measures are intended to minimize seabird attraction to fishing vessels and prevent seabirds from attempting to seize baited hooks. These measures apply to (1) operators of vessels fishing for groundfish with hook-and-line gear in the GOA and the BSAI; and (2) operators of vessels that are required to obtain a Federal permit and are fishing for groundfish with hook-and-line gear in waters of the State of Alaska adjacent to the GOA and the BSAI. Exempted from the measures are vessels that retain more round-weight equivalent of halibut than round-weight equivalent of groundfish.

1. All applicable hook-and-line fishing operations must be conducted in the following manner:

a. Use hooks that when baited, sink as soon as they are put in the water. This could be accomplished by the use of weighted groundlines and/or thawed bait.

b. Any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station.

c. Make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the bird.

2. All applicable hook-and-line fishing operations are required to employ one or more of the following seabird avoidance measures:

a. Deploy gear only during the hours specified at § 679.24(e)(2)(iv)(D) of this final rule, using only the minimum vessel's lights necessary for safety;

b. Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

c. Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed; or

d. Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear.

Many different ways exist to prevent seabirds from taking bait, getting hooked, and being drowned. No solution is totally effective on its own, but combinations of solutions can almost completely prevent bait loss and the killing of birds (Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), 1996a). Regulations at § 679.24(e)(2) (i) and (ii) require the mandatory use of two seabird avoidance measures by all applicable vessels. Section 679.24(e)(2)(iii) requires that every reasonable effort be made to release alive seabirds brought on board. In addition, regulations at § 679.24(e)(2)(iv) require the use of one or more of four seabird avoidance measures. NMFS strongly encourages fishermen to use as many of these four measures as is practicable.

Evaluation of Effectiveness of Seabird Avoidance Measures

Seabird avoidance measures have not been scientifically tested in the Alaskan hook-and-line fisheries. Although seabird avoidance measures have been studied in Southern Ocean hook-and-line gear fisheries, differences between

those fisheries and Alaskan fisheries warrant that testing be performed in the Alaskan hook-and-line fisheries prior to the application of measures developed for Southern Ocean fisheries. Some of the differences between the fisheries are: Target species, gear and gear deployment, vessel size and vessel configuration, weather and sea conditions, and prevalent seabird species. Therefore, rather than adopting measures developed for the Southern Ocean fisheries, NMFS implements in this final rule Alaskan seabird avoidance requirements that are structured to allow some flexibility in application, yet assure that changes in fishing methods will effectively reduce seabird bycatch. Studies to assess the effectiveness of seabird bycatch avoidance gear and methods will include the collection of observer data, testing of gear on NMFS research vessels, and could include industry surveys. When assessments have occurred and information is available as to the effectiveness and practicability of specific seabird avoidance measures in the Alaskan hook-and-line fisheries, NMFS may revise the regulations to reflect such findings.

USFWS recently amended its 1995 Biological Opinion on the NMFS Interim Incidental Take Exemption Program and outlined reasonable and prudent measures that NMFS must implement with regard to the short-tailed albatross (USFWS, 1997). Two additional non-discretionary reasonable and prudent measures follow: (1) Vessels in the hook-and-line fishery of the GOA and BSAI areas shall be required, as soon as possible but no later than October 1, 1997, to use seabird bycatch avoidance devices and methods during fishing activities, and (2) a research program outlining specific plans for testing the effectiveness of seabird bycatch avoidance gear and methods shall be completed before January 1, 1998. NMFS intends to implement these recommendations.

Revised Suggestions for Streamer Line Construction

NMFS revises the guidelines on streamer line construction published in the preamble to the March 5, 1997, proposed rule based on information that indicates streamer line construction should account for variable vessel sizes and gear deployment speeds (New Zealand Department of Conservation, 1997). Large vessels equal to or greater than 125 ft (38.1 m) length overall (LOA) deploying gear at approximately 5 knots may require a thicker dimension of streamer line (e.g., 8 millimeters (mm)), compared to smaller vessels less

than 125 ft (38.1 m) LOA deploying gear at faster speeds of 7 to 8 knots that may require streamer lines constructed of material only 5 mm in diameter. The key characteristics of an effective streamer line are:

- All materials used to construct the streamer line and to hold the streamer line in place are strong enough to withstand all weather conditions in which hook-and-line fishing activity is likely to be undertaken;
- The streamer line is attached to a pole at the stern of the vessel and positioned such that it will be directly above the baited hooks as they are deployed;
- The height of the streamer line at the point of attachment is 4 to 8 m above sea level;
- The streamer line for all vessel sizes is constructed of material that is between 5 and 8 mm in diameter;
- Length of streamer line is a minimum of 150 to 175 m for all vessel sizes;
- Number of streamers attached to a streamer line is 6 to 10 pairs;
- Streamers made of a heavy, flexible material that will allow the streamers to move freely and flop unpredictably (for example, streamer cord inserted inside a red polyurethane tubing);
- Streamer pairs attached to the bird streamer line using a 3-way swivel or an adjustable snap;
- Streamers should just skim above the water's surface over the baited hooks.

These characteristics should be taken into consideration when employing a bird streamer line, as required in this rule. NMFS may propose these or similar technical specifications for streamer lines be included in regulations after testing has occurred and information is available on the effectiveness of specifically constructed streamer lines in the Alaskan hook-and-line fisheries.

Response to Comments

Comment 1

The proposed measures deviate substantially from and are weaker than the seabird avoidance regulations established by CCAMLR that NMFS implemented for the protection of seabirds in the sub-Antarctic fisheries on March 5, 1996 (61 FR 8483). The proposed Alaskan measures were initially suggested by the North Pacific Longline Association and subsequently recommended to NMFS by the Council. NMFS should require the Alaskan hook-and-line fisheries to comply with the more stringent CCAMLR measures or something similar and not simply rubber-stamp the industry proposal.

Response. NMFS disagrees with the recommendation that the CCAMLR regulations should be implemented for the Alaskan fisheries at this time. The proposed regulations for seabird avoidance measures in Alaskan fisheries were based on the CCAMLR regulations. Nonetheless, differences exist between the sub-Antarctic longline fisheries governed under the CCAMLR regulations and the Alaskan groundfish hook-and-line fisheries. These differences include: (1) Target species, (2) gear and gear deployment, (3) vessel size and vessel configuration, (4) weather and sea conditions, and (5) prevalent seabird species. Patagonia toothfish (*Dissostichus eleginoides*) and southern bluefin tuna (*Thunnus maccoyii*) are key target species in Southern Ocean fisheries. Patagonia toothfish is fished with the Spanish method of bottom longlining, the gear being more buoyant than that used in Alaska. The southern bluefin tuna is a pelagic species fished with pelagic or surface gear. Hooks are attached to branch lines which are attached to the mainline. The mainline is suspended between buoys, and the 35 m branch lines hang below the mainline. The majority of the vessels are large (30–50 m) and deploy gear either from the stern or the side of the vessel at speeds of 10–13 knots. The prevalent seabird species incidentally taken are albatrosses and petrels.

In contrast, the Alaskan hook-and-line groundfish fisheries target primarily Pacific cod, sablefish, and turbot, which all are demersal species fished with bottom gear consisting of groundlines to which 1 ft gangions are attached. In general, larger vessels (100–150 ft (30.5–45.7 m)) are used in the BSAI and smaller vessels (30–80 ft (9.1–24.4 m)) are used in the GOA. All vessels deploy gear from the stern at speeds of 5–7 knots. The prevalent seabird species incidentally taken in the BSAI are fulmars and gulls, while in the GOA fulmars and albatrosses predominate.

Bottom gear used in the Alaskan hook-and-line fisheries is designed to sink quickly to reach the bottom where fishing occurs. Typically, fishermen weight the groundline to achieve its sinking quickly. In contrast, surface or pelagic gear used in Southern Ocean fisheries is designed to fish mid-water and may be more buoyant and not sink as quickly as bottom gear. The predominant number of relatively small vessels in the Alaskan hook-and-line fisheries (approximately 1200 vessels, 30–80 ft (9.1–24.4 m)) raises safety concerns with night-setting of gear as required by CCAMLR regulations (approximately 15–30 vessels, 100–150

ft (30.5–45.7 m)). The technical standards for streamer lines in CCAMLR regulations is not appropriate for the gear deployment speeds and the majority of the vessels in the Alaskan fisheries. No studies have been conducted on the effectiveness of CCAMLR seabird avoidance measures on Alaskan bird species. It is not known if the effectiveness of these measures is taxonomically dependent.

The CCAMLR regulations reflect the development of seabird avoidance measures designed for specific fisheries and operating conditions. Current information suggests that seabird avoidance techniques appropriate for one fishery may not be appropriate for another (Duckworth, 1995; CCAMLR, 1996a). CCAMLR has refined its conservation measures each year since 1990, based upon experience in the Southern Ocean fisheries, and is attempting to develop the right set of measures based upon the conditions in the CCAMLR fisheries. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. Nigel Brothers of Australia, primary author of "Catching Fish Not Birds," and the CCAMLR publication "Fish the Sea Not the Sky" state very clearly that the most applicable solutions for preventing seabirds from taking baits depend on the vessel, its size, the crew, weather and sea conditions, and where and when fishing occurs. These factors must be considered when implementing regulations for a particular fishery. While certain of the CCAMLR regulations are appropriate for the Alaskan fisheries and are incorporated into this final rule, others will be implemented only after further investigation demonstrates their practicability in the Alaskan fisheries.

USFWS believes that implementation of the proposed measures will contribute to the reduction of take of the endangered short-tailed albatross, and will lead to the development of more specific requirements for the use of seabird avoidance methods in the future (USFWS, 1997). Implementation of specific requirements, such as those adopted by CCAMLR, would not be prudent at this time, because no information is available on the effectiveness of these measures with the gear and conditions of Alaska's hook-and-line fisheries. Studies on the effectiveness of seabird bycatch avoidance devices in other fisheries are very limited, and conclusions from those studies are based on small sample sizes. USFWS believes that it is essential to gather data on the effectiveness of seabird avoidance

measures as soon as possible before requiring the mandatory use of potentially costly measures, such as those adopted by CCAMLR in the Alaskan fisheries. USFWS believes that the regulations recommended by the Council and proposed by NMFS should significantly reduce seabird bycatch. NMFS concurs with these views held by USFWS.

Comment 2

CCAMLR regulations require the use of thawed bait. NMFS should require the same in Alaskan waters. NMFS should also require that the hooks or groundlines be weighted such that they sink quickly.

Response. One way the proposed measures would reduce the incidental mortality of short-tailed albatrosses and other seabird species is by preventing seabirds from attempting to seize baited hooks. Two methods for causing baited hooks to sink as soon as they are put in the water is to use thawed bait or weighted groundlines. Although the preamble of the proposed rule noted these methods, NMFS believes that specifying the methods in regulation is not necessary. Rather, the regulation requires that the hooks sink as soon as they are put in the water, regardless which method is used. The industry should have the flexibility to select a method that is most appropriate to the vessel and fishing conditions.

The current scientific literature contains very limited amounts of information on the comparative performance of vessels that employ different bait thawing practices (Klaer and Polacheck, 1995). The authors found that fewer seabirds were caught by hook-and-line vessels when semi-thawed bait was used than when the bait was well-thawed. Due to small sample sizes, it would be difficult to determine whether the level of bait thawing had any substantial effects. Typically, the larger BSAI hook-and-line vessels employ automatic baiting machines that require semi-thawed bait. Fully thawed bait cannot be used effectively in the mechanized baiting and gear deployment used by most of the larger vessels.

A recent New Zealand study (Duckworth, 1995) found that lower seabird bycatch rates were achieved when thawed baits were used, although these rates were not statistically different from rates achieved through the use of frozen baits. This study called for further studies to measure the effectiveness of (1) types of bait that sink faster, and (2) the use of weighted hooks on groundlines.

The proposed rule would establish a performance standard for the Alaskan groundfish hook-and-line fisheries that requires baited hooks to sink as soon as they are put in the water. Given that the specific CCAMLR provisions have not been evaluated in Alaskan hook-and-line fisheries (see response to Comment 1) and given the limited amount of information available on their effectiveness, NMFS believes that fishermen must have some flexibility in method and means in meeting this performance standard rather than specifying in regulation how the standard must be met.

Comment 3

The CCAMLR requirement to use thawed bait should not be imposed for the Alaskan hook-and-line fleet, which typically uses partially thawed bait in automatic baiting operations. Fisheries regulated by CCAMLR use 15-ft (4.6 m) gangions that allow baited hooks to remain on the surface until the mainline descends 15 ft (4.6 m) and sinks the hooks. In contrast, the majority of Alaskan hook-and-line vessels use shorter gangions, approximately 1-ft (0.3 m) long. As long as fishermen adequately weight their groundlines, which is the only way to make baited hooks sink as soon as they are put in the waters, use of thawed bait has a negligible effect on the sinking rate of weighted hook-and-line gear in the Alaskan hook-and-line fishery.

Response. NMFS agrees. If fishermen use weighted groundlines that cause the hooks to sink as soon as they are put in the water, they would be in compliance with the rule. Nonetheless, the use of thawed bait remains an option to enhance the sinking rate of hook-and-line gear for the reasons provided in the response to Comment 2.

Comment 4

NMFS should require the use of a streamer line and the setting of hook-and-line gear at night. The proposed measures do not require either, although a vessel must choose one avoidance technique that may include night-setting or streamer lines. The publication "Catching Fish Not Birds" emphasizes that fishing vessels must employ several avoidance techniques to be effective, not a "pick one" strategy as proposed in the Alaskan regulations.

Response. As explained in the response to Comment 1, seabird avoidance techniques appropriate for one fishery may not be appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. The rule

would require that more than one avoidance measure be used. Regulations at § 679.24(e)(2)(i) and (ii) require seabird avoidance measures of all applicable hook-and-line vessels fishing for groundfish. Section 679.24(e)(2)(iii) requires that every reasonable effort be made to release alive seabirds brought on board. In addition, applicable hook-and-line vessels must employ at least one of four seabird avoidance measures set forth at § 679.24(e)(2)(iv). NMFS does not limit a vessel to using only one of these measures.

National Standard 10 of the Magnuson-Stevens Act requires that measures shall, to the extent practicable, promote the safety of human life at sea. Night-setting may pose safety concerns for smaller vessels. Requiring mandatory night-setting may be neither practicable nor an effective seabird deterrent in the Alaskan fishery given (1) that night-setting is not an available avoidance measure during June and July in northern latitudes, (2) the importance of squid in the diet of the short-tailed albatross suggests that short-tailed albatrosses may have nocturnal feeding habits (Sherburne, 1993), and (3) safety concerns related to night-setting by smaller vessels.

New Zealand is one of the leading nations in efforts to reduce seabird bycatch in hook-and-line fisheries. In 1992, licenses issued to Japanese hook-and-line vessels to fish in New Zealand waters required either that streamer lines must be used or gear must be deployed at night (Murray *et al.*, 1993). Concerns were raised that recommending night-setting be mandatory in certain areas would be unwise, given the nocturnal feeding habits of certain seabird species. Beginning in 1993, the use of streamer lines became mandatory for foreign and domestic hook-and-line fishing and night-setting was removed as a license requirement (Duckworth, 1995). Australia, another leading nation in seabird bycatch efforts, requires the use of streamer lines but does not require night-setting. All other seabird avoidance methods are voluntary.

Seabird avoidance requirements must fit the particular needs of the situation. Until further information is available on the effectiveness of seabird avoidance devices in the Alaskan hook-and-line fisheries, NMFS believes that providing the industry with some flexibility in choosing among possible options to reduce seabird bycatch is appropriate.

Comment 5

Vessels should be required to employ all three of the following measures at all times: Night-setting, streamers, and

deployment of hooks underwater using lining tubes.

Response. NMFS disagrees. As explained in the responses to Comments 1 and 4, seabird avoidance techniques appropriate for one fishery may not be appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. In addition, NMFS does not limit the number of seabird avoidance measures that may be employed. At this time, the preferred option is to implement seabird avoidance measures for the Alaskan hook-and-line fisheries that (1) provide the industry some flexibility in choosing seabird avoidance techniques that are appropriate for different vessel size categories and fishing operations, and (2) allow for the development and assessment of the effectiveness of these measures to determine whether they should be made mandatory.

Comment 6

The option for fishermen to use night-setting as a seabird avoidance technique should be dropped at this time, pending clarification of the feeding habits of short-tailed albatross. Preliminary information indicates these birds may have nocturnal feeding habits.

Response. NMFS disagrees. Although questions exist whether or not short-tailed albatross are nocturnal feeders, many other bird species are not. Available literature suggests that night-setting can be an effective technique to avoid catching birds in hook-and-line fisheries and NMFS does not have information to indicate otherwise. Therefore, NMFS will retain night setting as an optional seabird avoidance measure.

Comment 7

NMFS should not impose mandatory night and day restrictions on setting of hook-and-line gear. These restrictions should be retained as optional measures to reduce seabird mortality in the hook-and-line fisheries. The number of daylight hours widely vary in northern latitudes. Restrictions to limit fishing operations to hours of darkness would severely limit fishing operations, especially during the months of June or July when very few, if any hours of darkness exist. Furthermore, a prohibition on fishing operations during daylight would limit the ability of vessel operators to fish in a manner that avoids bycatch and mortality of other species of concern such as Pacific halibut.

Response. NMFS agrees. As explained in the responses to Comments 1, 4, and 5, seabird avoidance techniques appropriate for one fishery may not be

appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. NMFS does not limit the number of seabird avoidance measures that may be employed. At this time, the preferred option is to implement seabird avoidance measures for the Alaskan hook-and-line fisheries that (1) provide the industry some flexibility in choosing appropriate seabird avoidance techniques, and (2) allow for the development and assessment of the effectiveness of these measures to determine whether they should be made mandatory. At this time, night-setting of hook-and-line gear will remain an optional measure to reduce seabird mortality.

Comment 8

The technical specifications of the streamer line should be included in the proposed rule, as they are under the CCAMLR regulations. Furthermore, streamer lines should be required for all boats equal to or greater than 100 ft (30.5 m) LOA.

Response. NMFS disagrees. As explained in the responses to comments 1, 4, and 5, seabird avoidance techniques appropriate for one fishery may not be appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. This approach will provide the industry some flexibility in choosing appropriate seabird avoidance techniques and allow for the development and assessment of the effectiveness of these measures to determine whether they should be made mandatory. NMFS has revised guidelines for streamer line construction based on preliminary information from a commercial supplier of this equipment. The revised guidelines in the preamble of this final rule reflect variations in streamer line specifications that may be necessary according to vessel length and gear setting speed. Sturdier construction materials also may be necessary given the harsh Alaskan weather and sea conditions. In 1993, New Zealand fisheries required CCAMLR streamer line specifications as a minimum standard. It has since been determined that in some instances these technical specifications are not suitable for smaller vessels. When testing has occurred and information is available as to the effectiveness of various constructions of streamer lines in the Alaskan hook-and-line fisheries, NMFS may revise the regulations to include technical specifications for construction of streamer lines.

If streamer lines are proven effective in reducing seabird mortality in the Alaskan hook-and-line fisheries, NMFS, in consultation with the Council, can amend regulations to require mandatory use of streamer lines on larger hook-and-line vessels.

Comment 9

Simply towing a stick, board, or buoy behind a hook-and-line vessel will not significantly reduce seabird bycatch. Furthermore, these devices should be allowed only on those vessels with an observer aboard until such devices have been demonstrated to be as effective as streamer lines. Preferably, this option should be deleted.

Response. NMFS believes that preliminary testimony from Alaskan fishermen on the effectiveness of towing a buoy, board, stick, or other device in reducing seabird bycatch warrants the inclusion of this option in regulations. Any device that moves unpredictably across the water near the gear should help prevent birds from taking baited hooks. The towing of a buoy, board, stick, or other device may not be totally effective on its own, but combinations of solutions can significantly reduce seabird bycatch.

Comment 10

The proposed rule at § 679.24(e)(2)(iv)(B) should be revised to include an allowance for towing of a broom and minimum standards for the broom or stick should be specified. Furthermore, the regulatory phrase "or other device" should be deleted entirely from this regulation. It is the towing of a buoy or a broom that has been used by local fishermen as a bird avoidance technique, not the towing of other devices. If fishermen develop a new device-towing technique that proves to be more effective than a buoy bag or a broom, that should be considered in regulations at a later time.

Response. NMFS' intent in using the term "stick" instead of "broom" as a towing device is that the former term may be more broadly applied and would include a broom. NMFS has maintained the option for fishermen to use devices other than buoys, boards, or sticks to tow behind a vessel as a bird deterrent with the intent of providing fishermen some flexibility to explore bird avoidance techniques outside those strictly defined in the final rule. Future rulemaking can include specific standards for towed devices once information on which to base these standards becomes available.

Comment 11

It is ironic that NOAA/NMFS would require specific seabird avoidance measures for U.S. vessels longlining south of 30° south lat. and pay for the reprinting of the publication "Catch Fish Not Birds" that endorses these same regulations, but fail to require these measures in Alaskan waters to prevent the deaths of short-tailed albatross and other seabirds. The ability of the United States to influence long term international conservation efforts is dependent on the United States leading by example through adoption CCAMLR regulations for the Alaskan hook-and-line fisheries.

Response. As explained in the response to Comment 1, seabird avoidance techniques appropriate for one fishery may not be appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. NMFS recognizes and endorses international efforts to address seabird bycatch problems, and in this final rule adopts seabird avoidance measures that are appropriate for the Alaskan hook-and-line fisheries.

Comment 12

The proposed regulations are necessary and should be implemented without delay.

Response. NMFS agrees.

Comment 13

NMFS should include new bait casting methods as optional seabird avoidance measures. During line setting, two ways exist to throw the bait out of the turbulence of the vessel's wake and propeller in order to increase its sink rate: Fishermen can use an automatic bait throwing machine or they can educate their crew to throw the baited lines at least 10 m clear of the ship. Automatic bait throwing machines can significantly reduce seabird bycatch if used in conjunction with streamer lines.

Response. NMFS acknowledges that promising seabird avoidance techniques for the Alaskan fisheries likely exist other than those listed in the proposed rule. Alternative bait casting methods can be employed by fishermen and considered in future rulemaking if warranted.

Comment 14

The deployment of streamer lines and/or towing buoys during rough weather is probably of questionable value and would present another complication during difficult and possibly dangerous operating conditions. During times when winds

are in excess of 30 knots and during times of darkness, seabirds are not flying. Bird avoidance measures are not necessary during these times and could pose safety hazards for vessel operators and crew.

Response. NMFS disagrees. Current information from Australia and New Zealand indicates that, for certain seabird species (e.g., species in the order Procellariiformes), the number of seabirds present actually increases as the wind increases to about 50 knots and then may decrease in winds greater than 60 knots.

Comment 15

Dumping of fish waste when setting baited hooks actually acts as a lure to draw the birds away from the stern and the hooks. NMFS should eliminate reference in the proposed rule to the avoidance of dumping of offal while setting gear because this activity is a recognized measure used by the Alaskan fleet to reduce seabird mortality. Furthermore, the proposed rule should be revised to use only the vessel hauling location as the site of reference for the discharge of offal, given that most vessel operators set their gear from the stern.

Response. NMFS agrees and has changed the proposed rule to require that any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station. Numerous comments were received from the Alaskan hook-and-line industry expressing the apparent effectiveness of waste discharge in distracting seabirds from baited hooks. Nonetheless, the CCAMLR Scientific Committee recommends that offal discharge not be used in this way, because it can attract more seabirds to the vicinity of the vessel (CCAMLR, 1996b). In view of this position, therefore, NMFS will assess the long term effectiveness of this measure and may propose modification or rescission if circumstances warrant.

Comment 16

The proposed measure to encourage alternative offal disposal practices is supported. Avoiding the disposal of fish and bait waste during setting and hauling lessens the incentive for birds to follow fishing vessels in search of food. Fishermen can dispose of waste during other times of the fishing cycle or dump at sea in frozen blocks or in a homogenized state to reduce seabird interactions.

Response. The final rule will allow the discharge of offal during setting of gear, based on the testimony and comment from numerous Alaskan fishermen that properly discharged offal actually distracts birds from baited hooks.

Comment 17

Regulations for seabird avoidance measures in the Eastern GOA are not necessary. The small-boat fleet that typically fishes in the eastern GOA does not catch many birds and never has taken the endangered short-tail albatross. This fleet uses a leaded or weighted groundline and the gear and baited hooks sink very fast so that seabirds do not have much of an opportunity to get hooked.

Response. NMFS disagrees. Due to recent takes of the endangered short-tailed albatross and a heightened awareness of a seabird bycatch problem, NMFS believes that reductions in seabird bycatch are necessary and appropriate regardless of where a vessel using hook-and-line gear is fishing.

Comment 18

Snap-on gear used by many vessels in the Alaskan hook-and-line fisheries is weighted by galvanized or stainless steel snaps that attach the hooks to the groundline and sink quickly, hence avoiding a seabird problem.

Response. If gear methods cause the hooks, when baited, to sink as soon as they are put in the water, then the gear method would be in compliance with the rule at § 679.24(e)(2)(i). Nonetheless, small vessels using hook-and-line gear still must comply with other seabird avoidance provisions of the rule § 679.24(e)(2)(iv) to minimize, to the extent practicable, interactions between fishing operations and seabirds.

Comment 19

Concern has been raised about the enforceability of the proposed regulations. The bad publicity associated with seabird bycatch in general and the dire and well-publicized consequences of short-tailed albatross mortality in particular are sufficient to ensure compliance. Fishermen using hook-and-line gear recognize the necessity of the seabird avoidance techniques and will comply with the regulations.

Response. NMFS believes that the regulations can be enforced and will reduce seabird bycatch in these fisheries.

Comment 20

Fishermen must be provided some flexibility to assess different situations

and use judgment on how best to avoid catching birds.

Response. NMFS agrees. The final rule requires that baited hooks sink as soon as they are put in the water and that the discharge of offal be conducted in a manner that distracts seabirds away from baited hooks. The rule largely relies on the judgment of fishermen to discern how best to meet these standards. Options also are provided for additional seabird mitigation measures that are intended to provide a sufficient number of choices to fishermen to meet different fishing conditions and operations.

Comment 21

NMFS must commit to a reassessment of proposed measures based on an appropriately designed and statistically valid research plan. The final rule should include a provision that seabird avoidance measures be evaluated and revised based on the results of that research.

Response. The terms and conditions of the recently amended biological opinion issued in the ESA section 7 consultation with the USFWS requires NMFS to (1) implement as soon as possible but no later than October 1, 1997, regulations applicable to vessels in the hook-and-line fisheries of the GOA and BSAI requiring the use of seabird bycatch avoidance devices and methods during fishing activities, and (2) complete before January 1, 1998, a research plan outlining specific plans for testing of seabird bycatch avoidance gear and methods.

In response to these nondiscretionary requirements, NMFS is implementing the subject final rule and is pursuing the development of a research plan to assess the effectiveness of seabird avoidance techniques.

Comment 22

NMFS is encouraged to follow the advice of the USFWS to reinitiate consultation if two short-tailed albatross are taken during the 1997 fishery so that any new information relative to the consultation can be examined and to avoid approaching the incidental take level of 4 birds over a 2-year period and potential disruption of the fishery.

Response. NMFS agrees and will reinitiate consultation if two birds are taken during the 1997 fishery.

Comment 23

Rulemaking to mitigate seabird mortality in the hook-and-line fisheries should include more detailed information on the appropriate procedure necessary to remove a hook from a live bird's throat. NMFS mailed

this information to nearly 2,000 hook-and-line groundfish fishermen last year. Although the majority of birds are caught during setting of gear, a small number are hooked during hauling. For this reason, acting quickly to bring on board seabirds that are captured alive and safely removing hooks before releasing the birds are important practices.

Response. NMFS agrees that it is important to distribute to the fishing fleet information on the proper release of birds that are captured on hooks during haul back activities. NMFS will continue to support effective distribution to the fleet of information that addresses measures to reduce seabird mortality associated with fishing operations.

Comment 24

If the proposed seabird avoidance measures do not eliminate seabird interactions, NMFS should consider time/area closures to avoid bycatch of birds.

Response. NMFS, in consultation with the Council, likely would consider a change in fishing seasons or other measures to reduce seabird mortality, if necessary.

Comment 25

The proposed rule should be revised to require all hook-and-line vessels to carry at least one observer to monitor compliance and effectiveness of seabird bycatch mitigation measures.

Response. The Alaskan groundfish fishery already is one of the most intensively observed fisheries in the world. In 1996, over 30,000 observer days occurred. The industry pays for observer services and annual costs to the industry range between \$6 and \$7 million. All vessels equal to and over 125 ft (38.1 m) LOA must carry an observer aboard at all times. Vessels ranging between 60 ft (18.3 m) and 125 ft (38.1 m) LOA that fish for groundfish must have an observer aboard 30 percent of the vessels' fishing days during each calendar quarter. Most of the vessels using hook-and-line gear in the BSAI are larger vessels and carry an observer at all times. In the GOA, however, vessels typically are smaller and have less observer coverage. To require these vessels to carry an observer at all times would be prohibitively costly. NMFS believes that existing observer coverage, together with an appropriate research plan to assess the effectiveness of seabird mitigation measures, will provide sufficient information to assess the overall effectiveness of the proposed seabird mitigation measures.

Comment 26

NMFS should encourage fishermen to test underwater gear setting systems, which are very effective in avoiding seabird mortality. CCAMLR will be reviewing the feasibility of using these systems based on trials during this season.

Response. NMFS agrees. At least one owner of a vessel participating in the Alaskan hook-and-line fishery has notified NMFS that he is installing a lining tube on board his vessel and that he will keep NMFS apprised of the effectiveness of that system on board his vessel for possible consideration in the future as a regulatory requirement.

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- Sherburne, J. 1993. Status Report on the Short-tailed Albatross, *Diomedea albatrus*. Alaska Natural Heritage Program, Environment and Natural Resources Institute, University of Alaska Anchorage. Anchorage. 58pp.
- USFWS. 1997. Amended Biological Opinion on the NMFS Interim Incidental Take Exemption Program. USFWS communication to NMFS, February 19.
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Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a FRFA which describes the impact this final rule would have on small entities. Based on the analysis, it was determined that this rule could have a significant economic impact on a substantial number of small entities. In 1995, 1,217 and 100 hook-and-line catcher vessels harvested groundfish from the GOA and BSAI, respectively. Catcher/processor vessels numbered 35 and 46 in those respective areas. Very significant impacts on small entities could occur if the groundfish fisheries are altered or perhaps closed due to the annual take of the endangered short-tailed albatross being exceeded. The likelihood of this happening is great under the status quo alternative as indicated by recent takes (e.g., two in 1995).

This rule's combined mandatory and alternative provisions could result in a significant economic impact on a substantial number of small entities depending on which measures are used. In some cases, procedural or operational changes may be necessary in fishing operations. However, this rule does provide a range of alternatives that will enable vessel owners to minimize the economic impacts they experience. The cost of buoys and bird streamer lines as seabird bycatch avoidance devices range from \$50–\$250 per vessel. A lining tube is a technology used in fisheries of other Nations to deploy baited hooks underwater to avoid birds and is offered as a possible option. NMFS anticipates that the operators of smaller vessels (less than 60 ft (18.3 m)) would choose an avoidance measure other than a lining tube, which could cost as much as \$35,000 per vessel. There are 154 and 53 hook-and-line catcher vessels and 31 and 45 catcher/processor vessels equal to or greater than 60 ft (18.3 m) in the GOA and BSAI, respectively.

If the annual take of short-tailed albatross in the hook-and-line fisheries operating under these proposed measures would exceed the take limit established under the ESA section 7 consultation, the actual economic impacts resulting from the modification of the reasonable and prudent measures established to minimize take of the short-tailed albatross would depend upon the development and

implementation of revised measures. Such revised measures could range from additional or modified seabird avoidance measures, to fishery closures. The economic impact on fishing operations would depend upon the length of time of the closed period and the additional cost of revised measures. The likelihood of exceeding the take limit is less under the final rule than under the status quo alternative. NMFS has taken steps in the final rule to minimize economic impacts on small entities consistent with the objectives of the Magnuson-Stevens Act. These steps include: (1) Allowing a choice of measures to be used, and (2) including options that may already be in use. The required measures were determined to be the least burdensome on small entities. The no-action alternative was rejected as more burdensome on small entities because if the incidental take were exceeded and closures were imposed, the likely effect would be a significant loss of fishing opportunity for all small entities involved in the groundfish hook-and-line fishery. The economic impacts of this final rule on small entities could result in a reduction in annual gross revenues by more than 5 percent and could, therefore, potentially have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: April 23, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 679.24, paragraph (e) is added to read as follows:

§ 679.24 Gear limitations.

* * * * *

(e) *Seabird avoidance gear and methods for hook-and-line vessels fishing for groundfish—(1)*

Applicability. (i) Except as provided in paragraph (e)(1)(ii) of this section, the

operator of a vessel that is required to obtain a Federal fisheries permit under § 679.4(b)(1) must comply with the seabird avoidance measures in paragraph (e)(2) of this section while fishing for groundfish with hook-and-line gear in the BSAI, in the GOA, or in waters of the State of Alaska that are shoreward of the BSAI and the GOA.

(ii) The operator of a vessel is not required to comply with the seabird avoidance measures in paragraph (e)(2) of this section whenever the round-weight equivalent of halibut retained on board exceeds the round-weight equivalent of groundfish retained on board.

(2) The operator of a vessel described in paragraph (e)(1) of this section must

conduct fishing operations in the following manner:

(i) Use hooks that when baited, sink as soon as they are put in the water.

(ii) Any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station.

(iii) Make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds.

(iv) Employ one or more of the following seabird avoidance measures:

(A) Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

(B) Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed;

(C) Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear; or

(D) Deploy gear only during the hours specified below, using only the minimum vessel's lights necessary for safety.

HOURS THAT HOOK-AND-LINE GEAR CAN BE DEPLOYED FOR SPECIFIED LONGITUDES ACCORDING TO PARAGRAPH (E)(2)(IV) OF THIS SECTION

[Hours are Alaska local time]

Calendar month	Longitude		
	Shoreward to 150°W	151 to 165°W	166 to 180°W
January	1800-0700	1900-0800	2000-0900
February	1900-0600	2000-0700	2100-0800
March	2000-0500	2100-0600	2200-0700
April	2100-0400	2200-0500	2300-0600
May	2200-0300	2300-0400	2400-0500
June	(¹)	(¹)	(¹)
July	(²)	(²)	(²)
August	2200-0400	2300-0500	2400-0600
September	2000-0500	2100-0600	2200-0700
October	1900-0600	2000-0700	2100-0800
November	1800-0700	1900-0800	2000-0900
December	1700-0700	1800-0800	1900-0900

¹ This measure cannot be exercised during June.

² This measure cannot be exercised during July.

[FR Doc. 97-10944 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 62, No. 82

Tuesday, April 29, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Docket No. FV97-911-1PR]

Limes Grown in Florida and Imported Limes; Change in Regulatory Period and Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on proposed changes to the regulatory period and the minimum size requirements currently prescribed under the lime marketing order and the lime import regulations. The marketing order regulates the handling of limes grown in Florida and is administered locally by the Florida Lime Administrative Committee (committee). This rule would revoke the suspension and maintain continuous, year round, implementation of regulations. This proposed rule would also increase the minimum size requirement from 1 $\frac{7}{8}$ to 2 inches in diameter for the month of June. This would result in the 2 inch minimum being required from January 1 through June 30 of each year. This rule would maintain and improve quality standards ensuring continued customer satisfaction with fresh limes. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by May 29, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, Fax: (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the

Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Aleck Jonas, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; *telephone:* (941) 299-4770, *Fax:* (941) 299-5169; or *Caroline Thorpe*, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; *telephone:* (202) 720-8139, *Fax:* (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: *Jay Guerber*, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; *telephone:* (202) 720-2491, *Fax:* (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 126 and Marketing Order No. 911 (7 CFR part 911), both as amended, regulating the handling of limes, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including limes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that

the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposal would make two changes to the regulations currently prescribed under the lime marketing order and the lime import regulations. The first change would revoke the temporary suspension of regulations scheduled for June 1, 1997, through December 31, 1997. This proposal would keep the regulations in effect throughout all of 1997 and thereafter. The second change would increase the minimum size from 1 $\frac{7}{8}$ inches to 2 inches for the month of June. This change would extend the current regulations requiring a minimum diameter of 2 inches from January 1 through May 31 to January 1 through June 30.

Section 911.48 of the lime marketing order provides authority to issue regulations establishing specific pack, container, grade and size requirements. These requirements are specified under Sections 911.311, 911.329 and 911.344. Currently, the requirements specified under Sections 911.311, 911.329 and 911.344 are temporarily suspended from June 1, 1997, through December 31, 1997.

This rule would revoke the scheduled suspension of regulations from June 1, 1997, through December 31, 1997. The committee met on February 5, 1997, and, on a unanimous vote, recommended terminating the scheduled suspension.

The suspension of regulations was first published, as a proposed rule, in the May 8, 1996, **Federal Register** (60

FR 20754). A notice, published in the June 26, 1996, **Federal Register** (61 FR 33047), extended the comment period of the proposed rule. The final rule was published in the August 21, 1996, **Federal Register** (61 FR 43141).

In its deliberations, the committee noted that this issue has been argued and debated by the committee since its original proposal. Even then, the committee was divided, passing the measure on a split vote of six in favor and four opposed, January 10, 1996. Comments from growers and grower/handlers concerning the changes in the proposed rule expressed concern that the loss of regulation and the associated quality standards would result in poor quality limes on the market and consumer dissatisfaction.

The committee, upon further discussion, shared these concerns. In fact, the committee revisited the issue on April 17, 1996. After deliberations on the possibilities of what could occur without regulations, the committee recommended, on a vote of seven in support, none against and one abstention, that the original proposal be modified from a permanent change to a one year experiment. This action was taken to provide the committee with an opportunity to study the effects the suspension of the handling regulations would have on the industry and market versus the cost savings derived from it.

The change was originally to have begun on June 1, 1996. However, an extended comment period, and the requested modifications to the proposal itself, resulted in the start date being delayed to June 1, 1997. This one year delay in implementation has allowed the committee time to reevaluate the need to suspend regulations.

The proposed rule was issued in response to changes in the market, rising costs of production and the cost of replanting in the aftermath of Hurricane Andrew. The committee commented that when the change was originally recommended on January 10, 1996, the industry's position and future prospects appeared quite different from today. At that time, many of the lime trees were less than 3 years old and too young to bear fruit. These lime trees had been replanted after Hurricane Andrew. Money was being expended on replanting and no revenue was coming in from these young non-bearing trees. Further, last year citrus leaf minor was a new threat to the lime trees and at that time predictions called for expensive control methods that may or may not have worked. Throughout the industry, the concern to save money was great, and the suspension of regulations was thought to be a money saving avenue.

By reducing the regulatory period and its associated costs, the committee hoped to provide a decrease in industry expenses. The committee hoped the reduced costs of no regulations, no inspection fees and reduced committee expenses, resulting from fewer meetings and less compliance monitoring, would benefit the industry and foster growth.

The industry's present situation is much improved over what it was when the changes to the regulation were proposed and made final. The young lime trees are now 3 and 4 years old and bearing fruit, resulting in a larger crop and more revenue. Citrus leaf minor is far less a threat than originally presumed, due, in part, to native insect predation against it. This has resulted in less funds being required to combat this pest.

Also, the lime committee has operated off reserves this current season with a zero assessment, and it has budgeted to work off reserves with a zero assessment for the next season. This will result in industry savings of approximately \$75,000 each season. The committee believes that all of these factors have eliminated the critical need for the further cost savings which prompted the original request for the change.

Reviewing the past year, committee members stated that fresh limes sold were generally plentiful and of good quality. However, they also noted that even with quality regulations in effect, some poor quality limes do reach the retail market. The committee is now concerned that removing quality regulations, even for an experimental period, may result in even larger quantities of poor quality fruit reaching the retail market, resulting in consumer dissatisfaction and product substitution. Committee members commented that past experience has indicated the difficulty of enticing customers to return to a product once substitution has taken place.

Committee members maintain that although some poor quality limes still appear on the market, the regulations have done much to reduce the number and help provide uniform quality. This, in turn, has ensured customer satisfaction with fresh limes which is a primary concern to the industry. Thus, the committee believes the benefits of the quality regulations outweigh the now diminished need to take action that would result in cost savings.

This proposed rule would also change the minimum size regulations established under the order. This proposal would increase the minimum size diameter from 1 7/8 inches to 2 inches for the month of June. This change would extend the current

regulations requiring a minimum diameter of 2 inches to January 1 through June 30, with 1 7/8 inches the standard for the remainder of the year. This change was recommended by the committee, on a unanimous vote, at its February 5, 1997, meeting.

Section 911.344 of the regulations specifies that limes contain not less than 42 percent juice by volume. This section was amended by a final rule published on December 4, 1996, and effective on January 3, 1997, (61 FR 64255). That rule was intended to increase the minimum size requirement for limes grown in Florida from 1 7/8 inches to 2 inches in diameter during the period January 1 through May 31. The December 4, 1996, rule when read with the May 8, 1996, proposed suspension would result in a minimum size diameter of 2 inches for the months of January through May. During that time prices are high and quality lower, resulting in an incentive to pack lower quality fruit. From January 1, 1996, through May 31, 1996, Florida shipped 50,365 bushels of limes, approximately 14 percent of the total, 362,289 bushels, shipped in 1996. Florida shipped 55,136 bushels of limes in June 1996, approximately 14 percent of the total, 387,833 bushels, shipped thus far in the 1996-97 season which ends in March.

Limes that are 2 inches or larger in diameter have a higher juice content than smaller limes. The larger limes have a greater chance of meeting the 42 percent juice content requirement. Increasing the minimum size to 2 inches in diameter would result in more fresh limes meeting the 42 percent juice content requirement. The larger size should also reduce the number of limes failing inspection for low juice content. This would help lower handling costs by reducing the expense of repacking and regrading fruit that fails inspection.

During committee deliberations, members commented that the current 2 inch minimum diameter rule has been well received by their customers. Committee members expressed that the 2 inch requirement ends too early in the season. The committee agreed that the problem with limes with low juice content extends into June and July. Committee members were concerned that customers would switch to a substitute product in place of fresh limes after being disappointed with the lack of juice.

The committee discussed increasing the minimum size requirements for both June and July. The committee members noted that weather conditions in South Florida are in transition during the month of July, changing from relatively

dry, to increasing rains and tropical storms as the month progresses. The increasing rains allow the smaller limes to contain more juice. Unfortunately, the same rains cause larger limes to begin having problems, such as stylar-end break down and yellowing. Also, limes left on the tree to gain size can be lost during tropical storms. Although some retail samples in July had low juice content in the smaller limes, committee members reasoned that the transitory weather conditions of July and its corresponding problems support maintaining the current minimum of 1 7/8 for July. Therefore, the committee is recommending that the 2 inch minimum diameter extension end June 30 with 1 7/8 inch minimum diameter the standard for the rest of the season.

Section 8e of the Act provides that when certain domestically produced commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would change the regulatory period and the minimum size requirements under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for limes imported into the United States are currently in effect under Section 944.209 [7 CFR 944.209]. This proposed rule would revoke the temporary suspension period scheduled for June 1, 1997, through December 31, 1997. This rule would leave the lime import regulations in effect throughout 1997 and thereafter. This proposal would also increase the minimum size requirement for imported limes during the month of June. Under this rule, the minimum size requirement for June would increase from the current 1 7/8 inches to 2 inches. This reflects the same changes that would be made under the order for Florida limes. The minimum size and grade requirements for Florida limes are specified in section 911.344 under marketing order 911. The minimum diameter size requirement is not specifically stated in the lime import regulation. Therefore, no change is needed in the text of Section 944.209.

Mexico is the largest exporter of limes to the United States. During the 1995–96 season, Mexico exported 5,591,451 bushels to the United States, while all other import sources shipped a combined total of 167,832 bushels during the same time period. From June 1, 1996, through December 31, 1996, Mexico exported 4,151,867 bushels of limes to the United States, approximately 71 percent of the total,

5,819,410 bushels, shipped thus far in the 1996–97 season ending in March. Mexico exported 559,525 bushels of limes to the United States for the month of June 1996, approximately 10 percent of the total, 5,819,410 bushels, shipped thus far in the 1996–97 season.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 10 handlers subject to regulation under the order and about 50 producers of Florida limes. There are approximately 35 importers of limes. Small agricultural service firms, which include lime handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of these handlers, producers, and importers may be classified as small entities.

Based on the Florida Agricultural Statistic Service and committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida limes during the 1995–96 season was \$16.50 per 55 pound bushel box equivalent for all domestic shipments, and the total shipments for the 1995–96 season were 371,413. Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments. In addition, many of these handlers ship other tropical fruit and vegetable products which are not included in committee data but would contribute further to handler receipts.

Section 911.48 of the lime marketing order provides authority to issue regulations establishing specific grade and size requirements, and section 8e of the Act requires that when such regulations are in effect for limes, the same or comparable requirements be applied to imports.

This proposal would change the regulatory period and the minimum size requirements currently prescribed under the lime marketing order and the lime import regulations. This rule would revise both the domestic and import regulations by removing a scheduled, June 1, 1997, through December 31, 1997, suspension of regulations and maintaining continuous, year round, handling regulations. The regulations are specified in sections 911.311, 911.329 and 911.344 and establish pack, container, grade and size requirements. This proposed rule would also increase the minimum size requirement from 1 7/8 inches to 2 inches in diameter for the month of June. The committee recommended these changes to maintain and improve the quality of limes in the marketplace.

This proposal is expected to have a positive impact on growers, handlers and importers, as fruit and vegetable prices are quite responsive to quality differentials. This action is intended to maintain and improve quality. At the meeting, the committee discussed the impact of this change on handlers and producers in terms of cost. Any costs to handlers and importers caused by this proposal would be the loss of projected savings from the suspension. The majority of possible cost savings would have resulted from eliminating inspection fees during the suspension.

The scheduled suspension period would have only been effective for one year, resulting in limited cost savings. The industry is already used to budgeting for inspection and associated regulation costs. The Federal/State Inspection Service assesses fees to provide their service. The cost for inspection is equitable. Small and large handlers are charged the same base rate, with the overall cost determined by a handler's volume.

During this season, and the season prior, the committee voted to operate on reserves rather than assessing the industry. This will result in an industry cost savings of approximately \$75,000, the approximate cost of operating the committee for a year, during each of these two years. This will do much to offset any costs that result from the revocation of the suspension period. Assessments, when they are applied, are based on the amount of fruit handled, therefore, the costs are borne proportionally by small and large operations. Consequently, the benefits of no assessments are received equally. Importers do not have to pay assessments to maintain the marketing order.

Since the recommendation to establish the suspension period was

made, industry needs for cost savings have diminished. The focus has shifted to the need for stable markets and returns. Customers are willing to pay for quality, and complementary studies show that customers return purchase rate declines considerably if they are disappointed by the quality of the original purchase. The current cost of inspection is \$.14 per 55 pound equivalent. However, a drop in quality could result in a price reduction measured in dollars rather than cents on the same equivalent. Thus, the benefits of a quality standard outweigh the minimal cost savings that may have resulted from the suspension.

The increase in the minimum size for June would also provide a cost benefit. With an increase in the minimum size, limes are more likely to meet the 42 percent minimum juice content requirement. This is expected to reduce the incidence of repacking, resulting in lower costs to handlers and importers. Maintaining and increasing quality to the consumer would result in a strong and stable market, benefiting growers, handlers and importers.

Shipments of Florida limes for the 1994-95 season were 289,213 bushels, for the 1995-96 season they were 371,413 bushels, and for the current 1996-97 season, though not complete, shipments through February 18, 1997, with 41 days remaining in the season, stand at 382,991 bushels. A steady increase in production is indicated. Mexican exports have also increased from 2,626,707 bushels in the 1990-91 season to 5,591,451 bushels in the 1995-96 season.

Committee members have considered alternatives to rescinding the suspension period. The committee considered a continuous period of no regulations for the months of June through December. They reconsidered the merits of such an action, determining that removing regulations to save money may have costs, such as lost market share, which would overshadow any potential savings. The committee determined that in the time that had passed since the original consideration of a suspension period, the need for cost savings measures had passed, and that the benefits of the quality standards outweighed the cost savings that may have been realized. The committee was unanimous in its belief that the need for the suspension has passed.

Under the change in minimum size, the committee considered the alternative of also changing the minimum size for July. While the committee agreed that there are limes with low juice in July, there were

problems with increasing the minimum size requirement for that month. During July, the weather begins to shift to more tropical conditions. Rainfall increases, which adds juice to the limes, but it also causes problems with the larger sized fruit. Because of these problems, this alternative was rejected. Accordingly, the committee unanimously recommended the changes as outlined.

This action would not impose any additional reporting or recordkeeping requirements on either small or large lime handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, limes must meet the requirements as specified in the U.S. Standards for Grades of Persian Limes (7 CFR 51.1000 through 51.1016) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The committee's meeting was widely publicized throughout the lime industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the February 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on these issues. The committee itself is composed of ten members, of which four are handlers, five are producers and one is a public member. The majority of committee members represent small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule, as it pertains to limes imported into the United States.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 911 and 944 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 911 and 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 911—LIMES GROWN IN FLORIDA

§§ 911.311, 911.329 [Amended]

2. Scheduled suspension of §§ 911.311 and 911.329 effective June 1, 1997, through December 31, 1997, is terminated.

§ 911.344 [Amended]

3. Scheduled suspension of § 911.344, effective June 1, 1997, through December 31, 1997, is terminated, and paragraph (a)(3) is amended by removing the words "at least 2 inches diameter" and adding, in their place, the words "at least 2 inches in diameter from January 1 through June 30, and at least 1 7/8 inches in diameter from July 1 through December 31".

PART 944—FRUITS, IMPORT REGULATIONS

§ 944.209 [Amended]

4. Scheduled suspension of § 944.209 effective June 1, 1997, through December 31, 1997, is revoked.

Dated: April 25, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-11164 Filed 4-25-97; 1:54 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF ENERGY

10 CFR Part 960

RIN 1901-1172

General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: In response to additional requests from several interested persons, the Department of Energy has granted additional time to comment on proposed amendments to its General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories.

DATES: Comments should be received no later than May 16, 1997.

ADDRESSES: All written comments are to be submitted to April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 98608, or provided by electronic mail to 10CFR960@notes.ymmp.gov.

FOR FURTHER INFORMATION CONTACT: April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office P.O. Box 98608, Las Vegas, Nevada 89193, (800) 967-3477.

SUPPLEMENTARY INFORMATION: On December 16, 1996, the Department published its Notice of Proposed Rulemaking, proposing amendments to 10 CFR Part 960. 61 FR 66158. The Notice provided a public comment period that was scheduled to close on February 14, 1997. On February 3, 1997, the public comment period was extended to March 17, 1997. 62 FR 4941. On March 20, 1997, the public comment period was reopened and the time for filing public comments was extended to April 16, 1997. 62 FR 13355.

Issued in Washington, D.C. on this 23rd day of April, 1997.

Lake Barrett,

Acting Director, Office of Civilian Radioactive Waste Management, Department of Energy.
[FR Doc. 97-10995 Filed 4-28-97; 8:45 am]

BILLING CODE 6450-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0969]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Public hearings and request for comments.

SUMMARY: The Board will hold public hearings on home-equity lending, and invites consumers, consumer advocacy organizations, lenders, and other interested parties to attend and to provide written comments on relevant issues. The hearings are required by the Home Ownership Equity Protection Act of 1994, which amended the Truth in Lending Act to impose additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. The act directs the Board to examine the

home-equity loan market and the adequacy of existing Truth in Lending provisions in protecting the interests of consumers. The Board will also use the hearings to examine broader Truth in Lending issues, primarily on how the finance charge could more accurately reflect the cost of consumer credit. In the Truth in Lending Act Amendments of 1995, the Congress directed the Board to study the finance charge issue. The Board submitted a preliminary analysis last year, and the hearings will assist the Board in its further deliberations.

DATES: *Hearings.* The hearings are scheduled as follows:

1. June 3, 1997, 8:15 a.m. to 4:30 p.m., in Los Angeles, California.

2. June 5, 1997, 8:15 a.m. to 4:30 p.m., in Atlanta, Georgia.

3. June 17, 1997, 8:15 a.m. to 4:30 p.m., in Washington, DC.

Comments. Comments from persons unable to attend the hearings or wishing to submit written views on the issues raised in this notice must be received by Friday, July 18, 1997.

ADDRESSES: *Hearings.* Hearings will be held at the following locations:

1. Los Angeles—Federal Reserve Bank of San Francisco, Los Angeles Branch, 950 South Grand Avenue.

2. Atlanta—Federal Reserve Bank of Atlanta, 104 Marietta Street.

3. Washington, DC—Terrace Room E of the Federal Reserve Board Martin Building, C Street Northwest, between 20th and 21st Streets.

Comments. Comments on the questions listed in this document should refer to Docket No. R-0969, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Attorney, or Sheilah A. Goodman, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412; for copies of the Board's reports to the Congress on possible changes to the finance charge and on the adequacy of consumer protections for home-equity credit lines, Publications, at (202) 452-3244, Board

of Governors of the Federal Reserve System; users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452-3544. The reports are also available on the Internet at <http://www.bog.frb.fed.us/boarddocs/RptCongress>.

For directions and other matters relating to the meeting facilities in Los Angeles, Public Information, Federal Reserve Bank of San Francisco, Los Angeles Branch, at (213) 683-2901; in Atlanta, Ms. Jess Palazzolo, Public Affairs Department, Federal Reserve Bank of Atlanta, at (404) 521-8747.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the "finance charge") and as an annual percentage rate (the "APR"). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226).

II. Public Hearings

The Home Ownership Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160, amends the TILA to impose new disclosure requirements and substantive limitations on certain closed-end home-equity mortgage loans. The act also directs the Board to hold hearings on home-equity lending no later than September 1997.

The Board has scheduled three one-day hearings in Los Angeles (Tuesday, June 3), Atlanta (Thursday, June 5), and Washington, DC (Tuesday, June 17). The hearings will focus for much of the day on statements from the public about home-equity lending, as mandated by the HOEPA. The remaining portion of the hearings will elicit views about broader Truth in Lending issues that are currently under Board consideration, primarily how the TILA's finance charge disclosure could more accurately reflect the cost of consumer credit. The Truth in Lending Act Amendments of 1995, Pub. L. 104-29, 109 Stat. 271, direct the Board to study the finance charge issue, including the feasibility of treating as

finance charges all costs associated with a credit transaction. A preliminary analysis of these matters was submitted to the Congress in April 1996, and additional information gathered at the hearings will assist the Board in its further deliberations.

Home-Equity Lending

The HOEPA is the Congress's response to anecdotal evidence about abusive lending practices involving elderly and often unsophisticated homeowners who used their home as security for loans with high rates or high closing fees and with repayment terms the homeowners could not possibly meet. Changes to the TILA were implemented in section 32 of the Board's Regulation Z (12 CFR 226.32), effective in October 1995. 60 FR 15463, March 24, 1995.

The law does not prohibit creditors from making any home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, the HOEPA amendments layer disclosure and timing requirements onto the requirements already imposed for consumer credit transactions. Creditors offering HOEPA-covered loans must provide abbreviated disclosures to consumers three days before the loan is closed. The disclosures provide that consumers are not obligated to complete the closing, remind borrowers that they could lose their home if they fail to make payments, and state a few key cost disclosures, including the APR, the regular payment, and, if the loan has a variable rate, a "worst case payment" if rates increase as high and quickly as possible under the loan agreement.

In addition, creditors making "section 32" loans are prohibited from including in their loan agreements, among other provisions: (1) Balloon payments in loans with maturities of less than five years, (2) payment schedules that result in negative amortization, (3) higher default interest rates, and (4) prepayment penalties in most instances. Consumers entering into a HOEPA-covered loan may rescind the transaction for up to three years after closing if creditors fail to provide the early disclosures or if they include a prohibited term in the loan agreement.

Some types of home-secured loans are exempt from the section 32 requirements. For example, home-purchase loans are exempt. Reverse mortgages are exempt from these requirements (but are subject to an alternative detailed disclosure scheme also a part of the HOEPA and implemented in section 33 of Regulation Z).

Open-end lines of credit are also exempt from section 152 of the HOEPA, as congressional hearings preceding enactment did not reveal evidence of abusive practices connected with open-end home-equity lending. Instead of covering open-end credit, the Congress directed the Board to submit a report on whether the existing Truth in Lending rules provide adequate protections for consumers obtaining home-equity lines of credit, and to hold initial hearings within three years of the law's enactment. In November 1996, the Board submitted to the Congress a report finding that there was no evidence at that time to support the belief that excluding open-end home-secured lines of credit from the HOEPA encourages creditors to offer open-end home-equity loans as a way of evading the act's stricter disclosure rules and limitations for closed-end home-equity loans. The report concluded that the current TILA disclosure requirements give consumers important information that they generally find helpful, and generally provide consumers with adequate information and protection.

Section 158 of the HOEPA requires the Board, in consultation with its Consumer Advisory Council, to conduct public hearings that examine home-equity loans in the marketplace and the adequacy of federal laws (including the new rules affecting section 32 mortgages and reverse mortgage transactions) in protecting consumers—particularly low-income consumers. The statute provides that the Board should solicit participation from consumers, representatives of consumers, lenders, and other interested parties.

To focus the discussion at the hearings, interested parties wishing to present oral statements at the hearings (and persons submitting written comments to the Board) on these matters are asked to address the issues set forth below, as applicable.

General

The HOEPA is a reaction to anecdotal evidence about sometimes dire consequences for homeowners with low or fixed incomes who live in communities lacking access to traditional lending institutions and who entered into home-equity loans with high rates or high fees. The law does not prohibit any type of home-equity lending or regulate the cost of home-equity loans, but seeks to curb possible consumer harm by additional disclosures and substantive contract limitations.

- What effect has the HOEPA had on homeowners seeking home-equity credit and on credit opportunities in the

communities that were the focus of the legislation: (1) Has there been a change in the volume of consumers seeking and obtaining home-equity installment loans? (2) Have costs for home-equity installment credit increased, decreased, or stayed about the same? (3) For consumers who have received them, what has been the effect of the HOEPA disclosures? For example, is there evidence that the disclosures or three-day waiting period have dissuaded consumers from consummating the loan, or caused them to question or renegotiate certain terms? (4) Are the current disclosures adequate? Could they be augmented to provide better protections? If so, describe the additional disclosures and how they would provide better protections.

Exemptions

Section 129(l)(1) of the TILA authorizes the Board to exempt specific mortgage products or categories of mortgages from some or all of the HOEPA's prohibitions if the Board finds that the exemption (1) is in the interest of the borrowing public, and (2) will apply only to products that maintain and strengthen home ownership and equity protection.

- Discuss any suggested exemption for the Board to consider, identifying the specific mortgage product or categories of mortgages, the extent of the exemption believed to be appropriate, and how the exemption would meet the standards required for the Board to provide the exemption.

Prohibitions

Section 129(l)(2) of the TILA authorizes the Board to prohibit acts or practices in connection with (1) mortgage loans that the Board finds to be unfair, deceptive, or designed to evade section 152 of the HOEPA; and (2) refinancings of mortgage loans that the Board finds to be associated with abusive lending practices or that are otherwise not in the interest of the borrower. In 1995 as a part of its study of the TILA's finance charge, the Congress asked the Board to address any abusive refinancing practices that creditors may use to avoid the TILA's three-day right of rescission for certain home-secured loans. In its report to the Congress on those issues, the Board noted certain practices identified by consumer advocates and governmental agencies. Overall, the Board concluded that the problem of creditors engaging in refinancings for the purpose of avoiding a consumer's rescission rights was not widespread, and that existing state and federal laws adequately provide protection against creditors that

circumvent the TILA or that engage in unfair and deceptive credit practices.

- Discuss any acts or practices that the Board might consider prohibiting, and the reasons why, or disclosure or other remedies the Board might consider to address the acts or practices.

Open-End Credit

Open-end lines of credit are exempt from section 152 of the HOEPA. The Congress directed the Board to submit a report on whether the existing Truth in Lending rules provide adequate protections for consumers obtaining home-equity lines of credit. The Board's report concluded that in general existing rules provide adequate protections and that there was no evidence at that time to support the belief that the exclusion encourages creditors to offer open-end home-equity loans as a way to evade the HOEPA's stricter requirements for closed-end home-equity loans.

- Address the issue of whether the existing exemption for open-end home-equity loans is appropriate, and the reasons why. If additional protections are needed, specify the suggested changes and how those changes address the concerns which trigger the need for the additional requirements.

Reverse Mortgages

Reverse mortgages—which typically contain payment schedules with negative amortization and a balloon payment—are exempt from the requirements of section 152. The Act provides for an alternative detailed disclosure scheme in section 154. Creditors must disclose costs associated with the reverse mortgage, including a total annual loan cost rate, at least three business days before consummation of the transaction (or before the first transaction under an open-end plan).

- (1) Are the current disclosures adequate? Could they be augmented to provide better protections? If so, describe the additional disclosures and how they would provide better protections. (2) What has been the effect of consumers receiving the new reverse mortgage disclosures at least three days before consumers consummate the loan? (3) Are you aware of any problems with the current regulatory scheme that the Board might consider addressing?

Finance Charge

The TILA and Regulation Z require disclosure of the "finance charge," the cost of consumer credit expressed as a dollar amount. The cost of credit is also expressed as an annual percentage rate. The uniform disclosure of financing costs is intended to assist consumers in shopping for credit products. The

finance charge does not include every cost associated with obtaining consumer credit, such as many charges paid in a real estate-secured loan. Despite rules that attempt to define with precision which charges should or should not be considered finance charges, ambiguities—and litigation alleging incorrect categorization of charges—sometimes result.

The Congress responded to creditors' concerns about liability in the Truth in Lending Act Amendments of 1995. The amendments expressly exclude from the finance charge some of the specific fees that have been the subject of litigation. The 1995 Amendments direct the Board to report to the Congress on how the finance charge could be modified to more accurately reflect the cost of consumer credit, including the feasibility of treating as finance charges all costs required by the creditor or paid by the consumer as an incident of the credit. The Board published a notice of the congressional report and sought comment from the public. 60 FR 66179 (December 21, 1995). The Board received about 200 comments relating to possible changes to the finance charge, mostly from creditors or their representatives.

In April 1996 the Board submitted to the Congress a preliminary analysis of possible changes to the finance charge. The Board did not reach definitive conclusions, given the short statutory deadline for the report and the complexity of the issues. The preliminary report will be supplemented by a final report at a later date, allowing the Board to take advantage of additional sources of information, such as evidence that may be presented at the June 1997 hearings.

To focus discussion at the hearings, persons wishing to offer oral statements (or persons submitting written comments) should address the following issues presented in the Board's preliminary report:

Striving for a "Meaningful" Cost Disclosure

The TILA is intended to help consumers compare costs when they shop for credit. To be meaningful, disclosures must be accurate and complete. They should be detailed enough to enable the borrower to understand the effect of different pricing alternatives, but generic enough to permit an easy comparison of the overall cost between products and creditors. To enable consumers to make comparisons, disclosures should be provided before the consumer decides which creditor to use.

Today's credit marketplace is complex. Consumers are offered a myriad of choices for installment and revolving credit products. There are many pricing alternatives and opportunities to obtain ancillary products and services, such as optional credit life insurance. Some credit decisions are gradual, typically for a home-purchase loan. Others can be immediate, increasingly so as consumers shop for credit via the telephone or electronic communications. The TILA attempts in a single set of rules to ensure that consumers receive accurate, complete disclosures whether they are considering simple or complex credit transactions. For the most part, these disclosures are provided before the consumer becomes obligated for the debt but after the consumer has chosen which credit provider to use.

The current regulatory disclosure scheme is admittedly imperfect. Early disclosures are unlikely to be complete, particularly in the case of real estate-secured loans or cases where decisions have not been made about optional products. Many consumers receive their TILA disclosures after the credit choice has been made. As a shopping tool, the disclosures may miss the mark. Instead, the TILA disclosures provide consumers with a standardized confirmation of the terms of the credit agreement.

- How can the TILA best provide meaningful cost disclosures? Would consumers be better served if fewer cost disclosures, such as the interest rate, closing costs, and payment schedule, were delivered earlier in the shopping process? How should the disclosures address costs for optional products or for required services with transaction-specific pricing? If less precise disclosures are provided earlier, what disclosures, if any, should be provided after costs become known, and when should the more accurate disclosures be provided?

Defining the "Cost" of Credit

The finance charge includes many but not all costs associated with a credit transaction. There is broad agreement that greater consistency for categorizing charges is needed, but not on how to achieve it. One view is that the TILA disclosures should identify "what the consumer pays" in connection with a credit transaction. Thus, finance charges should include all charges paid by the borrower to the creditor or to the creditor and to third parties, such as service providers (even if the service is optional, such as credit life insurance). Only costs that are paid in a comparable

cash transaction would be excluded from the finance charge.

Another approach to the cost of credit looks at "what the creditor requires" to provide the credit. This perspective raises issues concerning the treatment of fees paid to third parties. Some would include fees for services required (or if not required, if the fee was retained by the creditor). Others would oppose any duty on creditors to include fees imposed by third parties, such as for appraisals, courier fees, and title insurance. Still others believe the price of optional services—whether paid to the creditor or a third party—should never be included as a "cost" of the credit.

- Address how the "cost" of credit is most accurately reflected, including the treatment of fees—whether optional, or required or retained by the creditor.

Charges Included in the APR

The APR translates the dollar amount of the disclosed finance charge into a percentage figure. For open-end credit, the APR for advertisements and account-opening disclosures solely reflects the cost of interest, since the nature of the product typically involves fluctuating balances and account activity. The APR that appears on periodic billing statements is a somewhat broader measure. It reflects interest and certain finance charges that typically recur (a transaction fee for cash advances, for example); one-time fees or those associated with originating or renewing a credit line (such as "points" imposed to open a home-secured line of credit) are not included, to avoid a skewed APR during a single billing cycle.

The APR for closed-end loans includes the interest and certain other charges such as points and required insurance. There is broad support for improving this APR disclosure, but ideas differ widely on how to go about it. Some believe the APR for closed-end credit would be more meaningful if it reflected *all* costs paid by the consumer, including those currently excluded such as fees associated with real estate-secured loans (for example, fees for appraisals or title insurance) or premiums for credit life insurance purchased at the consumer's option. Others argue that the current APR figure is too broad and is not helpful because consumers are confused about the relationship between the APR and the contract interest rate and thus ignored it as a shopping tool. Others say the APR does not reflect the economic reality of the credit transaction in the case of home-purchase loans and that an APR based on an average time homeowners

stay in a home would be more helpful than an APR based on a twenty-year loan term, for example.

Changing the APR calculation for home-secured closed-end transactions would have dramatic implications for creditors and consumers. Creditors would face major and immediate costs—to reprogram computers, create new forms, and retrain personnel. Consumer education would be needed over an extended period to assist consumers in understanding the significance of new disclosures.

- Address the issue of how the APR disclosure for open-end plans or closed-end credit could be improved. Estimate the costs associated with creditor compliance and consumer education for any alternatives you offer to the present regulatory scheme.

III. Form of Statements and Comments

These hearings are open to the public to attend. Invited speakers will participate in several panel discussions. In addition, about an hour is scheduled for brief statements by interested parties in each segment, starting at 11:45 a.m. for home-equity lending and at 3:45 p.m. for issues concerning the TILA's finance charge. To allow as many persons in these segments to offer their views as possible, oral statements should be brief (about five minutes or less, if possible); written statements of any length may be submitted for the record. Interested parties who wish to participate are asked to contact the Board in advance of the hearing date, to facilitate planning for this portion of the hearings. The order of speakers will be based on their registration at the hearing site on the day of the hearing.

Comment letters should refer to Docket No. R-0969, and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

By order of the Board of Governors of the Federal Reserve System, April 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-11041 Filed 4-28-97; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN-127-FOR; State Program Amendment No. 95-5]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Indian's regulations pertaining to an exemption for coal extraction incidental to the extraction of other minerals. The amendment is intended to revise the Indian program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., e.s.t., May 29, 1997. If requested, a public hearing on the proposed amendment will be held on May 27, 1997. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t. on May 14, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Charles F. McDaniel, Acting Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office. Charles F. McDaniel, Acting Director, Indianapolis Field Office, Office of Surface Mining

Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226-6700.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232-1547.

FOR FURTHER INFORMATION CONTACT:

Charles F. McDaniel, Acting Director, Indianapolis Field Office, Telephone: (317) 226-6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Indian Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indian program. Background information on the Indian program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

By letter dated March 7, 1997 (Administrative Record No. IND-1565), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to the required program amendments at 30 CFR 914.16(cc) and 914.16(dd). Indiana proposes to amend the Indiana Administrative Code (IAC) at Title 310 Department of Natural Resources. The full text of the proposed program amendment submitted by Indiana is available for public inspection at the locations listed above **ADDRESSES**. A brief discussion of the proposed amendment is presented below.

1. 310 IAC 12-1-7 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals: Contents of Application for Exemption

Indiana proposes to amend the first sentence in 310 IAC 12-1-7 by replacing the words "but is not limited to" with the words "at a minimum." At 310 IAC 12-1-7(15)(A), the reference to "IC 13-4.1" is changed to read "IC 14-34." Indiana proposes to delete the existing provision at 310 IAC 12-1-7(17).

2. 310 IAC 12-1-7.1 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Public Availability of Information

Indiana proposes to add new section 7.1. Subsection (a) requires that except as provided in subsection (c), all information submitted to the director be available for public inspection and copying and be maintained until at least three years after expiration of the period during which the subject mining area is active. Subsection (b) allows Indiana to keep information confidential if the person submitting the information requests in writing that it be kept confidential and demonstrates that the information concerns trade secrets or is privileged commercial or financial information. Subsection (c) requires that information requested to be held confidential under subsection (b) not be made publicly available until after notice and opportunity to be heard is afforded to persons seeking and opposing disclosure of the information.

3. 310 IAC 12-1-11 Exemption for Coal Extraction Incidental to the Extraction Of Other Minerals: Revocation and Enforcement

Indiana proposes to amend 310 IAC 12-1-11. At subsection (b), the word "reason" is replaced with the word "reasons" in the phrase "and the reason therefor." Subsection (c) is amended by adding an introductory sentence, revising subdivision (c)(1), and deleting existing subdivision (c)(2). The revised language reads as follows:

(c) The following shall apply concerning revocation of an exemption:

(1) If the director finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the director shall revoke the exemption and immediately notify the operator and any intervenors. If a decision is made not to revoke an exemption, the director shall immediately notify the operator and the intervenors, if any.

Subsection (d) is redesignated as new subdivision (c)(2) and the reference to "310 IAC 12-0.6-1-3" is replaced by "IC 4-21.5-3-7." New subdivision (c)(3) was added to require that a petition for administrative review not suspend the effect of a decision on whether to revoke an exemption. Subsection (e) is redesignated as new subsection (d) with minor wording changes. Subsection (f) was redesignated as new subdivision (d)(2) with minor wording changes. Subsection (g) was redesignated as new subdivision (d)(3).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking

comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on May 14, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each

meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 23, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97-10992 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO-032-FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Missouri regulatory program (hereinafter the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Missouri's revegetation success guidelines pertaining to the use of county average yields for prime farmland areas and special requirements for ground cover density on previously mined areas. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations and improve operational efficiency.

This document sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed

amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.d.t. May 29, 1997. If requested, a public hearing on the proposed amendment will be held on May 27, 1997. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on May 14, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Mid-Continent Regional Coordinating Center, at the address listed below.

Copies of the Missouri program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

Michael C. Wolfrom, Mid-Continent Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, Alton Federal Building, 501 Belle Street, Alton, Illinois, 62002, Telephone: (618) 463-6460.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City Missouri 65102, Telephone: (573) 751-4041.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Mid-Continent Regional Coordinating Center, Telephone: (618) 463-6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Description of the Proposed Amendment

By letter dated April 16, 1997 (Administrative Record No. MO-649), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment at its own

initiative. Missouri proposes to amend its revegetation success guidelines by adding procedures to allow for the use of county average yields when determining how the production on reclaimed prime farmland compares to the production on unmined prime farmland and by referencing the special requirements for ground cover density on previously mined areas in each land use section of the guidelines. A brief discussion of the proposed amendment is presented below.

1. Phase II/III Revegetation Success Standards for Prime Farmland

Missouri proposes to revise section II.C.5 and to add Appendix N. The revision to section II.C.5 specifies that if county average yields are selected as the success standard, the Natural Resource Conservation Service (NRCS) will determine the yield comparisons at their office in Columbia, Missouri. The operator is to submit the yield data from mined areas to the Missouri Land Reclamation Program. The yield data will then be submitted to the NRCS for comparisons. The NRCS will use the calculation procedure in Appendix N to make yield comparisons between unmined prime soils within the county to those that have been mined. Appendix N contains a four step procedure to determine the required post-mined productivity levels. It includes plotting the recent 10 year average yield, including the year in question, from the appropriate "County Agri-Facts" and ranking the averages from highest to lowest; comparing the yield in the year in question to the highest yield recorded in the 10 year period to determine percentage of yield for the specific year to the highest 10 year yield; multiplying the Productivity Index for the soil mapping unit from the "Productivity of Missouri Soils" publication by the percentage figure; and converting the final figure to bushels per acre. Appendix N also contains an example of the use of the calculation. Existing Appendix N was redesignated Appendix O.

2. Phase III Revegetation Success Standards for Pasture

At section I, Missouri proposes to revise its requirements for ground cover on previously mined lands reclaimed to a land use of pasture. Where pasture was the premining use, the ground cover shall be restored to at least original density, but not less than that necessary to control erosion. If the premining use was not pasture or the premining ground cover density was not recorded before redisturbance, the permittee shall establish a ground cover

density of 90 percent. The ground cover shall be determined during the last year of the five-year liability period. Productivity testing is not required on pasture land that was previously mined.

3. Phase III Revegetation Success Standards for Wildlife Habitat

At section I, Missouri proposes to add requirements for ground cover on previously mined lands reclaimed to a land use of wildlife habitat. Where wildlife habitat was the premining use, the ground cover shall be restored to at least original density, but not less than that necessary to control erosion. If the premining use was not wildlife habitat or the premining ground cover density was not recorded before redisturbance, the permittee shall establish a ground cover density of 70 percent. The ground cover shall be determined during the last year of the five-year liability period.

4. Phase III Revegetation Success Standards for Woodland

At section I, Missouri proposes to add requirements for ground cover on previously mined lands reclaimed to a land use of woodland. Where woodland was the premining use, the ground cover shall be restored to at least original density, but not less than that necessary to control erosion. If the premining use was not woodland or the premining ground cover density was not recorded before redisturbance, the permittee shall establish a ground cover density of 70 percent. The ground cover shall be determined during the last year of the five-year liability period.

5. Phase III Revegetation Success Standards for Industrial/Commercial

At section I, Missouri proposes to add requirements for ground cover on previously mined lands reclaimed to a land use of industrial/commercial. Where industrial/commercial was the premining use, the ground cover shall be restored to at least original density, but not less than that necessary to control erosion. If the premining use was not industrial/commercial or the premining ground cover density was not recorded before redisturbance, the permittee shall establish a ground cover density of 70 percent. The ground cover shall be determined during the last year of the five-year liability period.

6. Phase III Revegetation Success Standards for Residential

At section I, Missouri proposes to add requirements for ground cover on previously mined lands reclaimed to a land use of residential. Where residential was the premining use, the ground cover shall be restored to at least

original density, but not less than that necessary to control erosion. If the premining use was not residential or the premining ground cover density was not recorded before redisturbance, the permittee shall establish a ground cover density of 70 percent. The ground cover shall be determined during the last year of the five-year liability period.

7. Phase III Revegetation Success Standards for Recreation

At section I, Missouri proposes to add requirements for ground cover on previously mined lands reclaimed to a land use of recreation. Where recreation was the premining use, the ground cover shall be restored to at least original density, but not less than that necessary to control erosion. If the premining use was not recreation or the premining ground cover density was not recorded before redisturbance, the permittee shall establish a ground cover density of 70 percent. The ground cover shall be determined during the last year of the five-year liability period.

III. Public Comment Procedures

In accordance with the provisions of 330 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. c.d.t. on May 14, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review)

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 23, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97-10989 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[VA068-5018b and VA066-5018b; FRL-5817-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Reopening of the Public Comment Period on the Redesignation of the Hampton Roads Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a notice of proposed rulemaking published on March 12, 1997 (62 FR 11405). In that document EPA proposed to approve the Commonwealth of Virginia's request to redesignate the Hampton Roads area from marginal ozone nonattainment to attainment. The document also proposed to approve, as a state implementation plan (SIP) revision, the 10 year maintenance plan and mobile emissions budget developed for the Hampton Roads area and submitted by the Commonwealth. EPA received adverse comments on the action and a request to extend the public comment period on the proposed rulemaking. EPA is, therefore, reopening the public comment period on the March 12, 1997 notice of proposed rulemaking on the redesignation of the Hampton Roads ozone nonattainment area for a period of two weeks.

DATES: Comments must be received in writing on or before May 13, 1997. Commenters are advised that EPA does not intend to grant additional extensions or reopenings of the comment period on the March 12, 1997 proposed rulemaking.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should contact the EPA staff person listed below at least 24 hours prior to visiting the Regional office. Copies of the documents relevant

to this action are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566-2092. Questions may also be addressed via e-mail, at the following address:

Gaffney.Kristeen@epamail.epa.gov
[PLEASE note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION: On March 12, 1997, EPA published a direct final rule (62 FR 11334) approving the Commonwealth of Virginia's request to redesignate the Hampton Roads marginal ozone nonattainment area from nonattainment to attainment and the 10 year maintenance plan and mobile emissions budget submitted by the Commonwealth for the Hampton Roads area as revisions to the Virginia SIP. As stated in the March 12, 1997 rulemaking, EPA's action to approve the redesignation was based upon its review of the Commonwealth's submittal and its determination that all five of the Clean Air Act's criteria for redesignation have been met by and for the Hampton Roads area. The ambient air quality data monitored in the Hampton Roads area indicated that it had attained the National Ambient Air Quality Standard (NAAQS) for ozone for the years 1993–1995. Review of the data monitored in 1996 has indicated continued attainment of the ambient standard. EPA also determined that the Commonwealth had a fully approved Part D SIP for the Hampton Roads area, was fully implementing that SIP, and that the air quality improvement in the Hampton Roads area was due to permanent and enforceable control measures. In the same rulemaking, EPA approved the maintenance plan submitted by the Commonwealth of Virginia as a SIP revision because it provides for maintenance of the ozone standard for 10 years and a mobile emissions budget for the Hampton Roads area.

In its March 12, 1997 direct final rulemaking, EPA stated that if adverse comments were received on the direct final rule within the 30 days of its publication, EPA would publish a document announcing the withdrawal of its direct final rulemaking action. In a companion notice of proposed rulemaking published in the Proposed Rules section of the same **Federal**

Register (62 FR 11405), EPA also proposed to approve the Hampton Roads redesignation request and maintenance plan and mobile emission budget SIP revisions. In this proposal, EPA clearly stated that interested parties should comment at that time (during the 30 days), and that EPA did not intend to institute a second comment period. Because EPA received adverse comments on the direct final rulemaking within the prescribed comment period from the Allies in Defense of Cherry Point and U.S. Senator Lauch Faircloth of North Carolina, EPA withdrew the March 12, 1997 final rulemaking action pertaining to the Hampton Roads nonattainment area. In their letter submitting adverse comments, the Allies in Defense of Cherry Point also indicated that they intended to submit additional adverse comments and requested that the comment period be extended. However, because the 30 day public comment period EPA provided on the proposed rule was due to close two days after receipt of their request, there was insufficient time for EPA to publish a document extending the comment period. In order, therefore, to provide additional time to the Allies in Defense of Cherry Point, EPA would have to reopen the public comment period.

Despite the fact that EPA's March 12, 1997 actions clearly stated that all interested parties should comment during the originally prescribed 30 days and that EPA did not intend to institute a second comment period, in the interest of full public participation, EPA is reopening the public comment period for two weeks.

In determining its final action on the Commonwealth's redesignation request and maintenance plan for the Hampton Roads area, EPA shall consider all comments received on its March 12, 1997 proposed action. All interested parties are advised that comments must be received by the EPA Regional office listed in the **ADDRESSES** section of this document by May 13, 1997.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: April 17, 1997.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97-11124 Filed 4-25-97; 12:10 pm]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7219]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and

maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	New Britain (City), Hartford County.	Willow Brook	Approximately 300 feet downstream of Willow Brook Park Road.	*63	*61
			Approximately 800 feet upstream of Reservoir Road.	*345	*344
		Mason Pond Brook	At confluence with Willow Brook	*168	*170
			Approximately 75 feet upstream of Shuttle Meadow Avenue.	*172	*171
		Schultz Pond Brook	At the confluence with Willow Brook	*175	*176
			Approximately 815 feet upstream of Reservoir Road.	*345	*344
		Bass Brook	Approximately 1,600 feet downstream of East Street.	*89	*90
			Approximately 825 feet upstream of upstream crossing of Lewis Road.	*263	*267
		Batterson Park Pond Brook.	Approximately 400 feet downstream of Stanley Park Road.	*178	*177
			Approximately 115 feet upstream of Britany Farms Road.	*207	*206
		Gaffney Brook	At Francis Street	*174	*176
			Approximately 1,400 feet upstream of Francis Street.	*179	*181
		Sandy Brook	At corporate limits	*89	*90
			Approximately 650 feet upstream of Ella Grasso Road.	None	*131

Maps available for inspection at the New Britain City Hall, Engineering Department—Room 503, 27 West Main Street, New Britain, Connecticut.

Send comments to The Honorable Lucian Pawlak, Mayor of the City of New Britain, New Britain City Hall, 27 West Main Street, New Britain, Connecticut 06051.

Connecticut	Wilton (Town) Fairfield County.	West Branch Saugatuck River.	Approximately 840 feet upstream of Westport/Wilton corporate limits.	*96	*95
			Approximately 800 feet upstream of Route 53 (Cedar Road).	*160	*159

Maps available for inspection at the Inland Wetland Commission, Wilton Town Hall Annex, 238 Danbury Road, Wilton, Connecticut.

Send comments to Mr. Bob Russell, First Selectman for the Town of Wilton, 238 Danbury Road, Wilton, Connecticut 06897.

Georgia	Rockdale County (Unincorporated Areas).	Yellow River	At confluence of Big Haynes Creek	*646	*652
			Approximately 200 feet downstream of Georgia Highway 138.	*659	*660
		Big Haynes Creek	At confluence with Yellow River	*646	*652

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Little Haynes Creek	At confluence of Little Haynes Creek	None	*661
			At confluence with Big Haynes Creek	None	*661
			At county boundary	None	*697

Maps available for inspection at Rockdale County Planning and Development Department, 2570 Old Covington Highway, Conyers, Georgia.

Send comments to Mr. Randolph W. Poynter, Chairman of the Rockdale County Board of Commissioners, 922 Court Street, P.O. Box 289, Conyers, Georgia 30207.

Michigan	Escanaba (Township) Delta County.	Little Bay De Noc	Entire shoreline within community	None	*585
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Maps available for inspection at the Escanaba Township Hall, County 416, 20th Road, Gladstone, Michigan.

Send comments to Mr. Kevin Dubord, Escanaba Township Supervisor, 3983 County 416, 20th Road, Gladstone, Michigan 49837.

Georgia	Trion (Town) Chattooga County.	Chattooga River	Approximately 1,400 feet downstream of U.S. 27.	*659	*656
			Approximately 0.75 mile upstream of confluence of Cane Creek.	*684	*682
		Cane Creek	At confluence with Chattooga River	*681	*679
			Approximately 0.5 mile upstream of Welcome Hill Road.	*681	*680
		Spring Branch	At confluence with Chappel Creek	*661	*659
			Approximately 100 feet downstream of Central Avenue.	*664	*663
		Chappel Creek	At confluence with Chattooga River	*661	*659
			Approximately 1,150 feet upstream of First Street.	*661	*659
		Trion Branch	At confluence with Chattooga River	*663	*661
			Approximately 50 feet upstream of Allgood Street.	*663	*662

Maps available for inspection at the Trion Town Hall, 128 Park Avenue, Trion, Georgia.

Send comments to The Honorable Alan Plunkett, Mayor of the Town of Trion, Trion Town Hall, P.O. Box 727, Trion, Georgia 30753.

Michigan	Fairbanks (Township) Delta County.	Big Bay De Noc	Approximately 200 feet west and south of the intersection of 11 Road and 11 Drive.	None	*584
			Approximately 1,550 feet west of the intersection of HH Road and 8th Road.	None	*585
		Green Bay	In the vicinity of Sac Bay	None	*585
			At the southernmost tip of Garden Peninsula.	None	*584
		Lake Michigan	Entire shoreline within community	None	*584

Maps available for inspection at the Fairbanks Township Hall, 4314 11 Road, Garden, Michigan.

Send comments to Mr. John Latulip, Fairbanks Township Supervisor, 4677 LL Road, Garden, Michigan 49829.

Michigan	Garden (Township) Delta County.	Big Bay De Noc	Entire shoreline within community	None	*585
		Lake Michigan	Entire shoreline within community	None	*584

Maps available for inspection at the Garden Supervisor's Office, State Road, Garden, Michigan.

Send comments to Mr. Gary Plant, Garden Township Supervisor, P.O. Box 82, Garden, Michigan 49835.

New York	Yonkers (City) Westchester County.	Saw Mill River	Approximately 1,420 feet downstream of Ashburton Avenue.	None	*95
			Approximately 0.4 mile upstream of Hearst Street.	*117	*115
		Crestwood Lake	Entire shoreline within community	None	*161

Maps available for inspection at the Engineering Department, Room 313, Yonkers City Hall, Yonkers, New York.

Send comments to The Honorable John D. Spencer, Mayor of the City of Yonkers, Yonkers City Hall, Yonkers, New York 10701.

North Carolina	North Topsail Beach (Town) Onslow County.	Atlantic Ocean	Approximately 225 feet south of the intersection of 14th Avenue and Ocean Boulevard (SR 1583).	*16	*19
			Just north of the intersection of Gray Street and North Carolina State Route 210.	*7	*11

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Stump Sound/Intracoastal Waterway.	Approximately 0.7 mile north of the intersection of Sand Piper Drive and New River Inlet Road.	*7	*13
			Approximately 0.5 mile northeast of confluence of Normans Creek and Old Sound Channel.	*7	*11

Maps available for inspection at the North Topsail Beach Town Hall, 2008 Loggerhead Court, North Topsail Beach, North Carolina.

Send comments to Ms. Ann Vause, Town of North Topsail Beach Manager, 2008 Loggerhead Court, North Topsail Beach, North Carolina 28460.

North Carolina	Surf City (Town) Pender and Onslow Counties.	Atlantic Ocean	Approximately 250 feet south of the intersection of NC 50 and Reachwood Drive.	*16	*19
			At intersection of Goldsboro Avenue and New River Drive.	*7	*11
		Topsail Sound	Approximately 1,250 feet northwest of the intersection of Pender Avenue and Shore Drive.	*7	*12
			Approximately 1,400 feet northwest of the intersection of NC 50 and Reachwood Drive.	*10	*9

Maps available for inspection at the Surf City Town Hall, P.O. Box 2475, Surf City, North Carolina.

Send comments to The Honorable Vance Kee, Mayor of the Town of Surf City, P.O. Box 2475, Surf City, North Carolina 28445.

North Carolina	Topsail Beach (Town) Pender County.	Atlantic Ocean	Approximately 350 feet southeast of the intersection of Clark Avenue and NC State Route 1554.	*17	*20
			At intersection of Humphrey Avenue and Shore Drive.	None	*13
		Topsail Sound	Approximately 700 feet west of the intersection of Shore Line Drive and Godwin Avenue.	*14	*13
			Approximately 450 feet northwest of intersection of Fields Avenue and Shore Drive.	*9	*10

Maps available for inspection at the Topsail Beach Town Hall, 820 South Anderson Boulevard, Topsail Beach, North Carolina.

Send comments to Mr. Eric Peterson, Topsail Beach Town Manager, P.O. Box 3089, Topsail Beach, North Carolina 28445-9831.

Ohio	Clark County (Unincorporated Areas).	Mad River	At CONRAIL	*889	*888
			Approximately 2,100 feet downstream of Snider Road.	None	*856

Maps available for inspection at the Clark County Building Department, 25 West Pleasant Street, Springfield, Ohio.

Send comments to Mr. Roger Tackett, President of the Clark County Board of Commissioners, P.O. Box 2639, Springfield, Ohio 45501.

Pennsylvania	Hatfield (Township) Montgomery County.	West Branch Neshaminy Creek Tributary No. 2.	Approximately 600 feet upstream of confluence with West Branch Neshaminy Creek.	*288	*289
			Approximately 600 feet upstream of Lansdale Tributary.	*303	*302

Maps available for inspection at the Hatfield Township Administration Building, 1950 School Road, Hatfield, Pennsylvania.

Send comments to Ms. Jean R. Vandegrift, President of the Township of Hatfield Board of Commissioners, 1950 School Road, Hatfield, Pennsylvania 19440.

Pennsylvania	Lansdale (Borough) Montgomery County.	West Branch Neshaminy Creek Tributary No. 2 (previously Lansdale Tributary and Neshaminy Creek Branch).	Approximately 250 feet upstream of Schues Road.	*299	*301
			Approximately 650 feet upstream of West 5th Street.	*324	*318

Maps available for inspection at the Lansdale Borough Building, One Vine Street, Lansdale, Pennsylvania.

Send comments to Mr. Lee Mangan, Lansdale Borough Manager, One Vine Street, Lansdale, Pennsylvania 19446.

Pennsylvania	Pike (Township) Berks County.	Bieber Creek	At a point approximately 730 feet upstream of Keim Road.	None	*398
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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At a point approximately 0.27 mile upstream of Keim Road.	None	*407

Maps available for inspection at the Pike Township Building, Hill Church Road, Oley, Pennsylvania.

Send comments to Mr. Timothy P. Korsak, Chairman of the Pike Township Board of Supervisors, R.D. #4, Box 280, Boyertown, Pennsylvania 19512.

Pennsylvania	Plains (Township) Luzerne County.	Mill Creek	Confluence with Susquehanna River	*551	*549
			Approximately 900 feet upstream from State Route 315.	None	*694
		Unnamed Tributary to Mill Creek.	Confluence with Mill Creek	None	*680
			Approximately 1,400 feet upstream of confluence with Mill Creek.	None	*680
		Susquehanna River	At downstream corporate limits	*550	*549
			Approximately 900 feet upstream of the upstream corporate limits.	*555	*553

Maps available for inspection at Plains Town Hall Municipal Building, 126 North Main Street, Plains, Pennsylvania.

Send comments to Mr. Robert Stella, Chairman of the Township of Plains Board of Commissioners, Luzerne County, 126 North Main Street, Plains, Pennsylvania 18705.

Pennsylvania	Reynoldsville (Borough) Jefferson County.	Soldier Run	Approximately 600 feet upstream of Worth Street.	*1,369	*1,368
			At corporate limits	*1,378	*1,376

Maps available for inspection at the Reynoldsville Municipal Building, 460 Main Street, Reynoldsville, Pennsylvania.

Send comments to Mr. Richard R. Reed, President of the Reynoldsville Borough Council, P.O. Box 67, Reynoldsville, Pennsylvania 15851.

Pennsylvania	Winslow (Township) Jefferson County.	Soldier Run	Downstream corporate limits	*1,378	*1,376
			Upstream corporate limits	None	*1,482

Maps available for inspection at the Winslow Township Municipal Building, R.D. 1, Reynoldsville, Pennsylvania.

Send comments to Mr. Kenneth J. Long, Chairman of the Township of Winslow Board of Supervisors, Township Municipal Building, R.D. 1, Box 4, Reynoldsville, Pennsylvania 15851.

Wisconsin	Eau Claire (City) Chippewa and Eau Claire Counties.	Chippewa River	At Interstate 94	*774	*773
			Upstream corporate limits	*808	*806
		Sherman Creek	Confluence with Chippewa River	*778	*776
			Approximately 1.0 mile upstream of Menomonie Street.	*807	*808
		Eau Claire River	At the confluence with Chippewa River ...	*784	*782
			Downstream side of Chicago and Northwestern Railroad spur.	*784	*783

Maps available for inspection at the Eau Claire City Hall, Inspection Service Office, 203 South Farwell Street, Eau Claire, Wisconsin.

Send comments to Mr. Don Norrell, Manager of the City of Eau Claire, 203 South Farwell Street, Call Box 5148, Eau Claire, Wisconsin 54707-5148.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 16, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97-11001 Filed 4-28-97; 8:45 am]

BILLING CODE 6718-04-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD99

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Black-footed Ferrets in Northwestern Colorado and Northeastern Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in cooperation with the Bureau of Land Management (Bureau), the Colorado Division of Wildlife (Colorado Division), and the Utah Division of Wildlife Resources (Utah Division) proposes to introduce black-footed ferrets (*Mustela nigripes*) into northwestern Colorado and northeastern Utah. The purposes of this reintroduction are to implement the recovery action of the species and to evaluate release techniques. Surplus captive-raised black-footed ferrets will be released in 1997, or later and additional animals will be released annually for several years thereafter or until a self-sustaining population is established. If the northwestern Colorado/northeastern Utah program is successful, a wild population could be established within about 5 years. The northwestern Colorado/northeastern Utah population would be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). This population would be managed under the provisions of an accompanying special rule.

DATES: Comments from all interested parties must be received by June 30, 1997.

ADDRESSES: Comments and materials concerning this proposal in northwestern Colorado or Wyoming should be sent to Mr. LeRoy Carlson, U.S. Fish and Wildlife Service, Ecological Services Office, 730 Simms

Street, Room 290, Golden, Colorado, 80401. Comments and materials concerning this proposal in northeastern Utah should be sent to Mr. Robert Williams, U.S. Fish and Wildlife Service, Utah Field Office, 145 East 1300 South, Suite 404, Salt Lake City, Utah, 84115. All comments and materials received will be available for public inspection, by appointment, during normal business hours at each of the above addresses, as well as at the Service's Ecological Service's office at 764 Horizon Drive, South Annex A, Grand Junction, Colorado, 81506-3946. **FOR FURTHER INFORMATION CONTACT:** Mr. Robert Leachman at the Grand Junction address above, telephone: 970/243-2778; or Ms. Marilet A. Zablan at the Salt Lake City address above, telephone: 801/524-5001.

SUPPLEMENTARY INFORMATION:

Background

1. Legislative

The Endangered Species Act of 1973, as amended (Act) was changed significantly when subsection 10(j) was added to allow for the designation of specific populations of listed species as "experimental populations." Previously, the U.S. Fish and Wildlife Service (Service) was authorized to reintroduce populations into unoccupied portions of a listed species' historical range when it would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about restrictions and prohibitions being placed on Federal and private activities. Under section 10(j), the Service can designate reintroduced populations established outside the species' current range but within its historical range as "experimental." This designation allows the Service flexibility in managing reintroduced populations of endangered species. Experimental populations are treated as threatened species under the Act, affording the Service greater discretion in devising management programs and special regulations for listed species. Section 4(d) of the Act allows the Service to adopt whatever regulations are necessary to provide for the conservation of a threatened species. These regulations are usually less restrictive than those for endangered species and are more compatible with routine human activities in the reintroduction area.

The Service can designate experimental populations to be either essential or nonessential and based on the best available information, determine whether such populations are

essential to the continued existence of the species. Nonessential experimental populations located outside of the National Wildlife Refuge System or National Park System are treated, under section 7 of the Act, as if they were species proposed for listing. Thus, only two provisions of section 7 apply to experimental populations found outside the above two systems: 1) section 7(a)(1)—which requires all Federal agencies to use their authority to conserve listed species; and 2) section 7(a)(4)—which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species throughout its range. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

However, pursuant to section 7(a)(2), specimens used to establish an experimental population may be removed from a donor population, provided their removal is not likely to jeopardize the continued existence of the species and that appropriate permits have been issued in accordance with 50 CFR 17.22.

2. Biological

The black-footed ferret has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, includes 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to New Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson *et al.* 1969, Forrest *et al.* 1985). The range of the ferret coincides with that of prairie dogs (Anderson *et al.* 1986), and ferrets with young have never been sighted outside of prairie dog colonies. Black-footed ferrets have been reported from black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.* 1986).

In the last century, widespread poisoning of prairie dogs, the conversion of native prairie to farmlands, and sylvatic plague have drastically reduced prairie dog numbers;

particularly in the southern portions of their range. This severe reduction in prairie dog numbers could have caused the near extinction of the black-footed ferret, although other factors such as secondary poisoning from prairie dog toxicants and canine distemper could also have caused this decline.

In 1964, a population of ferrets was discovered in South Dakota, but disappeared from the wild in 1974. The species was then thought to be extinct until in 1981 when a small population was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population was drastically reduced in numbers due to an outbreak of canine distemper. In 1986–87, 18 animals were taken into captivity to serve as founders for a captive propagation program. Today, the captive population exists of approximately 400 animals held at 7 separate facilities.

3. Recovery Efforts

The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) establishes a national recovery objective to ensure the survival of the species by:

(a) Increasing the captive population of ferrets to 200 breeding adults by 1991, which has been achieved;

(b) Establishing a prebreeding census population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010; and

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historic range.

When this national objective is achieved, the black-footed ferret will then be downlisted to threatened status, assuming that the extinction rate of established populations remains at or below the rate at which new populations are established. Cooperative efforts to rear black-footed ferrets in captivity have been successful and in 8 years, the captive population has increased from 18 to over 400 animals. In 1988, the single captive population was divided into three subpopulations to avoid the possibility of a catastrophic event eliminating the entire captive population. Presently, there are 7 separate subpopulations in captivity. Recovery efforts are now focusing on the reintroduction of animals back into the wild since a captive population of 240 breeding adults has been achieved.

4. Reintroduction Sites

The Service, in cooperation with 11 western State wildlife agencies, identified potential ferret reintroduction sites within the historical range of the

species. The Service selects these reintroduction sites in coordination with the Black Footed Ferret Interstate Coordinating Committee. The Northwestern Colorado/Northeastern Utah Black-footed Ferret Experimental Population Area (ExPA), the site selected for the fifth release of ferrets, is located in portions of Rio Blanco and Moffat counties, Colorado; Sweetwater County, Wyoming; and Uintah and Duchesne counties, Utah.

In Colorado, the ExPA occupies all of Moffat and Rio Blanco counties west of Colorado State Highway 13, west to the Utah State line, and north to the Wyoming State line. In Wyoming, the ExPA runs between Range 96 and 97 West (eastern edge), Range 102 and 103 West (western edge), and Township 14 and 15 North (northern edge). In Utah, the ExPA occupies all of Uintah and Duchesne counties in northeastern Utah. The eastern border of Uintah County adjoins the western borders of Moffat and Rio Blanco counties in Colorado. Coyote Basin, located on the Utah/Colorado border is a relatively flat valley surrounded by low hills and ridges. It is bordered on the south by the White River and the west by Kennedy Wash. The Coyote Basin Primary Management Zone (Coyote Basin) is bounded by the Utah-Colorado State line on the east, by the east-west line separating Townships 7 and 8 South on the north, by the north-south line separating Ranges 23 and 24 East on the west, and by the east-west Section line 1.6 kilometers (1 mile) south of Township 8 South on the south.

The ExPA is made up of a complex of white-tailed prairie dog colonies that extend from southwestern Wyoming, south to Elk Springs, Colorado, and west to Vernal, Utah. The dispersal of ferrets outside the proposed experimental area is highly unlikely due to its large size (3,218,907 hectares or 7,953,920 acres), the absence of suitable surrounding habitat (lack of prairie dog towns), and the presence of vegetative and topographical barriers. There are approximately 69,834 hectares (172,560 acres) of white-tailed prairie dog colonies in the ExPA that could potentially support at least 139 families of ferrets.

Contiguous prairie dog colonies and the lack of any physical barriers between the White River Resource Area in Colorado and Coyote Basin in Utah should provide for the movement of ferrets between the two areas. Ferrets released in Coyote Basin are likely to disperse to suitable contiguous habitats in Colorado. Due to the presence of physical barriers and less suitable prairie dog towns, the dispersal of

ferrets from the Little Snake Management Area release site to other areas within the ExPA is less likely. Any ferret found within the boundaries of the ExPA will be treated as experimental and nonessential.

a. Northwestern Colorado Experimental Population Sub-Area

In 1987, the Colorado Prairie Dog Management Group and the Black-footed Ferret Recovery Working Group selected northwestern Colorado as a potential release site because of: (1) the historical presence of ferrets in the area, (2) the abundance of prairie dogs, (3) the extensive amount of lands under management by the Bureau of Land Management (Bureau), and (4) the area's relative isolation from human activities.

The Northwestern Colorado Experimental Population Sub-Area includes lands in northwestern Colorado and southwestern Wyoming and this sub-area was historically occupied by black-footed ferrets. Recently, numerous surveys have been conducted in this area without locating ferrets. The Wyoming Black-footed Ferret Advisory Team endorses the experimental population area as defined in this rule (Bob Luce, Wyoming Game and Fish Department, *in litt.* 1993). The Colorado sub-area is about 12,186 kilometers (4,705 square miles) in size, and consists of approximately 49.5 percent Bureau lands, 38 percent private lands, 6 percent State school lands, 5 percent National Park Service lands, 1 percent Colorado Division of Wildlife lands, and 0.5 percent National Wildlife Refuge lands. Prairie dog towns cover approximately 65,620 hectares (162,146 acres) of this sub-area and they occur primarily on Bureau lands that are administered by the Little Snake Resource Area (Little Snake), the White River Resource Area (White River), and the Green River Resource Area (Green River).

b. Northeastern Utah Experimental Population Sub-Area

The Northeastern Utah Experimental Population Sub-Area, containing 2,001,101 hectares (4,942,720 acres) of habitat, includes all of Uintah and Duchesne counties in Utah. This sub-area lies within the historic range of the species. The Utah Black-footed Ferret Working Group selected Coyote Basin as the preferred reintroduction site because of its prairie dog numbers and their distribution. The Bureau and the Utah School and Institutional Trust Lands Administration (Utah Trust) manage most of the lands in Coyote Basin.

Black-footed ferrets will be released in the management areas only if certain

biological conditions are suitable, and meet the management framework that has been developed with the Colorado Division of Wildlife, the Utah Division of Wildlife Resources, the Service, and private landowners. The Service will reevaluate this reintroduction effort should any of the following conditions occur:

(a) Failure to maintain sufficient habitat to support at least 30 breeding adults after five years.

(b) Failure to maintain at least 90 percent of prairie dog habitat that was available in 1993.

(c) A wild ferret population is found within the ExPA following the initial reintroduction and prior to the first breeding season.

(d) An active case of canine distemper or any other contagious disease is discovered in any animal on or near the reintroduction area six months prior to the scheduled release.

(e) Less than 20 captive black-footed ferrets are available for the first release.

(f) Funding is not available to implement the reintroduction phase of the project in northwestern Colorado/northeastern Utah.

(g) Land ownership changes or cooperators withdraw from the project.

5. Reintroduction Protocol

The reintroduction protocol calls for the release of 20 or more captive ferrets in the first year of the program, and up to 50 or more animals annually for the following 2 to 4 years. Released animals must be excess to the needs for the continuation of the captive breeding program and any loss of animals will not affect the overall genetic diversity of the captive population. Since captive breeding of ferrets will continue, any animal lost in the reintroduction effort can be replaced. In future releases, it may be necessary to obtain ferrets from established reintroduced populations in order to enhance the genetic diversity of future released animals.

Two methods (hard and soft release) have been successfully employed for releasing captive ferrets into the wild. A hard release is when animals which are not conditioned are released into the wild a short time after arrival. A soft release is when the animals are supplied food, shelter, and protection from predators for an extended period of time before their release. In both methods, ferrets are released from cages above ground with access to underground nest boxes. Captive-bred ferrets are preconditioned by placing them in large pens that enclose a portion of a prairie-dog colony. It may also be necessary to surround each above-ground cage with an electric fence to prevent damage from

livestock or access by predators. The Service, along with its cooperators (collectively referred to as the Service), will decide which reintroduction method is best suited for the release. The Service is currently developing a specific release protocol that will become a condition of the endangered species permit authorizing the northwestern Colorado/northeastern Utah release. To enhance reintroduction success, pregnant females will be allowed to whelp on site and after acclimation, the family groups will then be released into the wild.

Released animals will be vaccinated against certain diseases (including canine distemper) and measures will be taken to reduce predation from coyotes, badgers, and raptors. All released ferrets will be marked (with passive integrated transponder tags (PIT tags)) and several animals will be radio-collared to monitor their behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the animals could die during the first year of release. Mortality is usually the highest during the first month of release. In the first year of the program, a realistic goal is to have at least 10 percent of the animals survive the first winter.

The goal of the Colorado/Utah reintroduction is to establish a free-ranging population of at least 30 adults within the ExPA after five years of release. At the release site, the Service will monitor population demographics and all sources of mortality on an annual basis (for up to five years). The Service does not expect to change the nonessential designation for this experimental population unless it deems this reintroduction a failure or the black-footed ferret is fully recovered in the wild.

6. Status of Reintroduced Population

This reintroduction is determined to be nonessential to the continued existence of the species for the following reasons:

(a) The captive population (founder population of the species) has been protected against the threat of extinction from a single catastrophic event by dividing it into seven separate subpopulations. Hence, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species are the 240 adults in the captive breeding

population. Animals selected for reintroduction purposes are not needed to maintain the captive population. Hence, any loss of animals in reintroduction will not affect the overall genetic diversity of the species.

(c) Any animals lost during this reintroduction attempt will be replaced through captive breeding. Juvenile ferrets are being produced in excess of the numbers needed to maintain the breeding population in captivity.

This will be the fifth release of ferrets back into the wild. The other reintroductions were in Wyoming, southwestern South Dakota, north-central Montana, and Arizona. These reintroductions are necessary for the recovery of the species so it can eventually be downlisted. The nonessential experimental population designation alleviates landowner concerns about possible land use restrictions that would otherwise apply under the provisions of the Act. This nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners can continue.

7. Location of Reintroduced Population

Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since 1991, extensive surveys have been conducted for black-footed ferrets at the proposed relocation sites. No ferrets or their sign (skulls, feces, trenches) were located. Therefore, the Service has concluded that wild ferrets are no longer present in the ExPA, and that this reintroduction will not overlap with any wild population.

Before the first breeding season, the nonessential experimental population will include all marked ferrets in the ExPA. After the first breeding season, the nonessential experimental population will include all ferrets located in the ExPA, including any unmarked offspring. All released ferrets and their offspring should remain in the ExPA because of prime prairie dog colonies and the surrounding geographic barriers. The Service will capture any ferret that leaves the ExPA and will either return it to the release site, translocate it to another site, place it in captivity, or leave it. If a ferret leaves the reintroduction area (but remains within the ExPA) and takes up residence on private property, the landowner can request its removal. If the landowner has no objection to its presence on his/her property, the animal will not be removed.

All released ferrets will be marked and the Service will attempt to determine the source of any unmarked animals found at the release site. Any ferret found outside the ExPA will be considered endangered, and may be captured for genetic testing. If the animal is genetically unrelated to members of the experimental population (possibly a wild animal), it will be retained for use in the captive breeding program. Under existing contingency plans, up to nine such ferrets can be captured for the captive population. If a landowner outside the experimental population area wishes black footed ferrets to remain on his/her property, the Service will develop a conservation agreement in cooperation with the landowner.

8. Management

This reintroduction will be undertaken in cooperation with the Bureau, the Colorado Division of Wildlife, and the Utah Division of Wildlife Resources and in accordance with the Cooperative Management Plan for Black-footed Ferrets-Little Snake Management Area and the Cooperative Plan for the Reintroduction and Management of Black-footed Ferrets in Coyote Basin, Uintah County, Utah. Copies of the respective plans can be obtained from the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado, 81625, and the Regional Manager, Utah Division of Wildlife Resources, Northern Region, 152 East 100 North, Vernal, Utah 84078.

Additional considerations pertinent to the reintroduction are discussed below:

a. Monitoring

Several monitoring efforts are planned during the first 5 years of the program. The Service will monitor prairie dog distribution and numbers, and the occurrence of sylvatic plague annually. Testing for canine distemper will be conducted on an annual basis starting prior to the release. Reintroduced ferrets and their offspring will be surveyed annually by use of spotlight surveys, snowtracking, and other visual surveys. Several ferrets will be radio-collared for more intensive tracking. Surveys will be conducted to monitor breeding success and juvenile survival rates.

Through public outreach programs, the Service will inform the public and other State and Federal agencies about the presence of ferrets in the ExPA and the handling of any sick or injured animals. The Service has requested that the Colorado Division of Wildlife and the Utah Division of Wildlife Resources serve as the primary contacts for

governmental agencies and private landowners whose jurisdictions are within the reintroduction area. These agencies will also serve as the primary contacts to report any injured or dead ferrets. All reports of any injured or dead animals should be referred to the appropriate Service Field Supervisor in each respective State (see **ADDRESSES** section). The Field Supervisor will also notify the Service's Division of Law Enforcement concerning any dead or injured ferret. Any ferret carcass found should not be disturbed so the cause of death may be determined.

b. Disease Considerations

Should canine distemper be reported in any mammal on or near the reintroduction site, the Service will reevaluate the reintroduction program. At least 10 coyotes (and possibly a few badgers) from the release site will be tested for canine distemper before ferrets are released. The Service will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into the ExPA. People will be requested to report any dead mammal or any unusual behavior observed in animals found within the area. Efforts are underway to develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague within prairie dog towns will take place before and during the reintroduction efforts.

c. Genetic Considerations

Ferrets selected for the reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than the overall captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases can correct this disparity. The ultimate goal is to establish wild ferret populations with the maximum genetic diversity as it is possible to attain with the founder individuals.

d. Prairie Dog Management

The Service will work with landowners and Federal and State agencies in the ExPA to resolve any management conflicts in order to: (1) maintain sufficient prairie dog colonies to support up to 30 adult black-footed ferrets and (2) to maintain at least 90 percent of the prairie dog habitat that was available in 1993.

e. Mortality

Only animals which are not needed for the captive breeding program will be used for this reintroduction. Predator

control, prairie dog management, vaccination, supplemental feeding, and/or improved release methods should partially offset any natural mortality. Public education will help reduce potential sources of human-related mortality.

The Act defines "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A person may take a ferret within the ExPA provided that any resulting injury or mortality to a ferret is unintentional, and was not due to negligence or malicious conduct. Such conduct will not be considered "knowingly taking" and the Service will not pursue any legal recourse. However, knowingly taking a ferret will be referred to the appropriate authorities for prosecution. The Service requests that any take, whether incidental or not, of a black-footed ferret be reported immediately to the Service's Field Supervisor (see **ADDRESSES** section). The Service expects a low level of incidental take since the reintroduction is compatible with traditional land use practices in the area.

It is anticipated that annual incidental take will be about 12 percent of all reintroduced ferrets and their offspring. If this level is exceeded in any given year, the Service will develop and implement measures to reduce the level of incidental take.

f. Special Handling

Under special regulations that apply to experimental populations, Service employees and agents acting on their behalf may handle black-footed ferrets for scientific purposes, relocation efforts to avoid conflict with human activities, recovery efforts, relocation to other reintroductions sites, and in aiding sick, injured, and orphaned animals, or salvaging dead animals. Any ferret not fit to remain in the wild will be placed in captivity. The Service will also determine disposition of all sick, injured, orphaned, and dead animals.

g. Coordination With Landowners and Land Managers

The Service and its cooperators tried to identify all major issues associated with this reintroduction before the development of the proposed rule. This proposed reintroduction was discussed with State agencies and landowners within the release site. They indicated their support for the project as long as—(1) the animals released in the ExPA are designated as a nonessential experimental population, and (2) that land use activities in the ExPA are not restrained without the knowledge and consent of the landowners.

h. Potential for Conflict With Oil, Gas and Mineral Development Activities

Development of minerals, oil and gas in the Little Snake Resource Area, could reduce available ferret habitat by approximately 3 percent (890 hectares, or 2,200 acres), if oversight is not provided. Within Coyote Basin in Utah, mineral extraction is the primary land use. However, the development of existing oil, gas, and mineral resources will not jeopardize the establishment of ferrets in the release area. The Service will work with exploration companies to avoid any adverse impacts to ferrets and their habitat, should any new oil or gas fields be developed in the Coyote Basin. The Service encourages land management agencies and landowners within the management area to adopt the Coyote Basin Management Plan mineral extraction guidelines. Additionally, the Service is currently developing new oil and gas guidelines for any future leases that will be issued in existing prairie dog ecosystems now being managed for black-footed ferret recovery.

i. Potential for Conflict With Grazing and Recreational Activities

The Service does not expect conflicts between livestock grazing and ferret management. As a result of this reintroduction, no additional restrictions will be placed on grazing or prairie dog control on private lands within the ExPA. If proposed prairie dog control on private or State trust lands locally affect ferret prey base within a specific area, State and Federal biologists will determine whether ferrets could be impacted. Big game hunting, prairie dog shooting, and trapping of furbearers or predators on the ExPA are not expected to adversely affect ferrets. If private activities impede the establishment of ferrets, the Service will work closely with landowners to develop appropriate procedures to minimize the conflicts.

j. Protection of Black-footed Ferrets

Ferrets will be released in a manner that provides short-term protection from natural (predators, disease, lack of prey base) and human related sources of mortality. Improved release methods, vaccination, predator control, and the management of prairie dog populations should help reduce natural mortality. Human sources of mortality will be minimized by releasing ferrets in areas with little human activity and development. The Service will work with landowners to help avoid certain

activities that could impair ferret recovery.

k. Public Awareness and Cooperation

Educational efforts will be undertaken to inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret. This program should increase public awareness of the significance of the ExPA program and the habitats upon which ferrets depend.

l. Overall

The designation of the northwestern Colorado/northeastern Utah population as a nonessential experimental population should encourage local cooperation since it allows greater flexibility in conducting normal activities within the release site. This designation is necessary in order to receive full cooperation from landowners, Federal, State and local governmental agencies, and recreational interests within the release site. Based on the above information, and utilizing the best scientific and commercial data available, (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the ExPA will further the conservation and recovery of the species.

Public Comments Solicited

The Service intends that any action resulting from this proposed rulemaking to establish a northwestern Colorado/northeastern Utah population as a nonessential experimental population be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited (see ADDRESSES section) from Federal, State, and local governmental agencies, the scientific community, industry, and any other interested party. Final promulgation of a rule to implement this proposed action will take into consideration all comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

Public Hearings

The Act provides for at least one public hearing, if requested, within 45 days from the date of publication of the proposal. Such requests for a hearing must be made in writing and addressed to the appropriate Field Supervisor for each State (see ADDRESSES section).

National Environmental Policy Act

The Service has prepared a draft environmental assessment as defined under the authority of the National

Environmental Policy Act of 1969. It is available from the Service Offices identified in the ADDRESSES section.

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Reintroduction of ferrets as proposed in this rulemaking would not have any significant effect on recreational activities in the experimental area. No closures of roads, trails or other recreational areas are expected, and only voluntary reductions in prairie dog shooting activities are expected. Because present regulations require that oil, gas and other mineral operations within the effected area comply with restrictions associated with wildlife, special status plant species, and livestock lambing grounds, ferret reintroduction is not expected to cause any significant change in these activities. Current mining projects would proceed as planned and any conflicts with future projects would be worked out in the early planning stages. No changes in current BLM grazing allotments are expected as a result of ferret reintroduction, and only temporary grazing restrictions within one quarter mile of release cages or other equipment are expected. Because only voluntary participation in ferret reintroduction by private landowners is proposed, this rulemaking is not expected to have any significant impact on private activities in the affected area. Due to the minimal effects anticipated, this rulemaking is not subject to review by the Office of Management and Budget under Executive Order 12866. Similarly, review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions, because no substantial changes in economic activity are expected. Because this rulemaking does not require that any action be taken by local or state governments or private entities, the Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or state governments or private entities.

References Cited

- Anderson E., S.C. Forrest, T.W. Clark, and L. Richardson. 1986. Paleobiology, biogeography, and systematics of the black-footed ferret *Mustela nigripes* (Audubon and Bachman), 1851. Great Basin Naturalist Memoirs 8:11–62.
- Forrest, S.C., T.W. Clark, L. Richardson, and T.M. Campbell III. 1985. Black-footed ferret habitat: some management and reintroduction considerations. Wyoming Bureau of Land Management, Wildlife Technical Bulletin, No. 2. 49 pages.
- Henderson, F.R., P.F. Springer, and R. Adrian. 1969. The black-footed ferret in South Dakota. South Dakota Department of Game, Fish and Parks, Technical Bulletin 4:1–36.
- U.S. Fish and Wildlife Service. 1988. Black-footed ferret recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 154 pages.

Authors

The primary authors of this rule are Robert Leachman (see **FOR FURTHER INFORMATION CONTACT** section) and Marilet A. Zablan (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation**PART 17—[AMENDED]**

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the existing entry for the “Ferret, black-footed” under **Mammals** to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
MAMMALS							
*	*	*	*	*	*		*
Ferret, black-footed	<i>Mustela nigripes</i>	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population.	E	1, 3, 343,_____	NA	NA
Do .....	.....do .....	.....do	U.S.A. [specific por- tions of WY, SD, MT, AZ, CO, and UT, see 17.84(g)(9)].	XN	433,_____	NA	17.84(g)
*	*	*	*	*	*		*

3. It is proposed that 50 CFR 17.84 be amended by revising the text of paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret population identified in paragraph (g)(9)(i), (g)(9)(ii), and (g)(9)(iii), and (g)(9)(iv) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population area, except as provided in paragraphs (g) (3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife

agency, who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret in the wild in the experimental population areas if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the Little Snake Black-footed Ferret Management Area/Coyote Basin Primary Management Zone when removal is necessary to protect the ferret, or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section;

(iv) To relocate ferrets within the experimental population area to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas, provided such take is incidental to and not the purpose of, the carrying out of an otherwise lawful activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct will not be considered “knowing take” for the purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

(6) Any taking pursuant to paragraphs (g)(3), (4) (vi) and (vii), and (5) of this section must be reported immediately to the appropriate Service Field Supervisor, who will determine the disposition of any live or dead specimens.

(i) Such taking in the Shirley Basin/Medicine Bow experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772-2374).

(ii) Such taking in the Conata Basin/Badlands experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224-8693).

(iii) Such taking in the north-central Montana experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Helena, Montana (telephone: 406/449-5225).

(iv) Such taking in the Aubrey Valley experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Phoenix, Arizona (telephone: 602/640-2720).

(v) Such taking in the northwestern Colorado/northeastern Utah experimental population area must be reported to the appropriate Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Golden, Colorado (telephone: 303/231-5280), or Salt Lake City, Utah (telephone: 801/524-5001).

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any ferret or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (g) (2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) The Shirley Basin/Medicine Bow Management Area is shown on the attached map for Wyoming and will be considered the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following

the first year of releases will comprise the nonessential experimental population, thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I-90, and west of State Highway 73 within Pennington, Shannon, and Jackson counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferret in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following actions if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(iii) The North-Central Montana Reintroduction Area is shown on the attached map for Montana and will be considered the core recovery area for this species in north-central Montana. The boundaries of the nonessential experimental population will be those parts of Phillips and Blaine counties, Montana, described as the area bounded on the north beginning at the northwest corner of the Fort Belknap Indian Reservation on the Milk River; east following the Milk River to the east Phillips County line; then south along said line to the Missouri River; then west along the Missouri River to the west boundary of Phillips County; then north along said county line to the west boundary of Fort Belknap Indian Reservation; then further north along said boundary to the point of origin at the Milk River. All marked ferrets found in the wild within these boundaries

prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population thereafter. A black-footed ferret occurring outside the experimental area in Montana would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it would be returned to the reintroduction area or to a captive facility.

(B) If an animal is determined not to be genetically related to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive breeding program.

(iv) The Aubrey Valley Experimental Population Area is shown on the attached map for Arizona and will be considered the core recovery area for this species in northwestern Arizona. The boundary of the nonessential experimental population area will be those parts of Coconino, Mohave, and Yavapai counties that include the Aubrey Valley west of the Aubrey Cliffs, starting from Chino Point, north along the crest of the Aubrey cliffs to the Supai Road (State Route 18), southwest along the Supai Road to township 26 North, then west to Range 11 west, then south to the Hualapai Indian Reservation boundary, then east and northeast along the Hualapai Indian Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 6 km (2.3 miles) to a point intercepting the east boundary of Section 27, Township 25 North, Range 9 West; then south along a line to where the Atchison-Topeka Railroad enters Yampa Divide Canyon; then southeast along the Atchison-Topeka Railroad alignment to the intersection of the Range 9 West/Range 8 West boundary; then south to the SE corner of Section 12, Township 24 North, Range 9 West; then southeast to SE corner Section 20, Township 24 West, Range 8 West; then south to the SE corner Section 29, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of Section 33, Township 24 North, Range 8 West; then northeast to the SE corner of Section 27, Township 24 North, Range 8 West; then southeast to the SE corner Section 35, Township 24 North, Range 8 West; then

southeast to the half section point on the east boundary line of Section 12, Township 23 North, Range 8 West; then southeast to the SE corner of Section 8, Township 23 North, Range 7 West; then southeast to the SE corner of Section 16, Township 23 North, Range 7 West; then east to the half section point of the north boundary line of Section 14, Township 23 North, Range 7 West; then south to the half section point on the north boundary line of Section 26, Township 23 North, Range 7 West; then east along section line to route 66; then southeast along route 66 to the point of origin at Chino Point. Any black-footed ferrets found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of ferrets into the reintroduction area. A black-footed ferret occurring outside the experimental area in Arizona would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is determined to have originated from the experimental population, either genetically or through tagging devices, it may be returned to the reintroduction area or to a captive facility. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(v) The Little Snake Black-footed Ferret Management Area in Colorado

and the Coyote Basin Black-footed Ferret Primary Management Zone in Utah will be considered the initial recovery sites for this species within the Northwestern Colorado/Northeastern Utah Experimental Population Area (see Colorado/Utah map). The boundaries of the nonessential Experimental Population Area will be all of Moffat and Rio Blanco counties in Colorado west of Colorado State Highway 13; all of Uintah and Duchesne counties in Utah; and in Sweetwater County, Wyoming, the line between Range 96 and 97 West (eastern edge), Range 102 and 103 West (western edge), and Township 14 and 15 North (northern edge). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of release will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases of ferrets into the reintroduction area will comprise the nonessential experimental population thereafter. A black-footed ferret occurring outside the Experimental Population Area would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it would be returned to the reintroduction area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan up to nine ferrets may be used in the captive breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(10) The reintroduced populations will be continually monitored during

the life of the project, including the use of radio telemetry and other remote sensing devices, as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or appropriate State wildlife agency or their agents and given appropriate care. Such an animal may be released back to its appropriate reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of the experimental population will be reevaluated within the first 5 years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

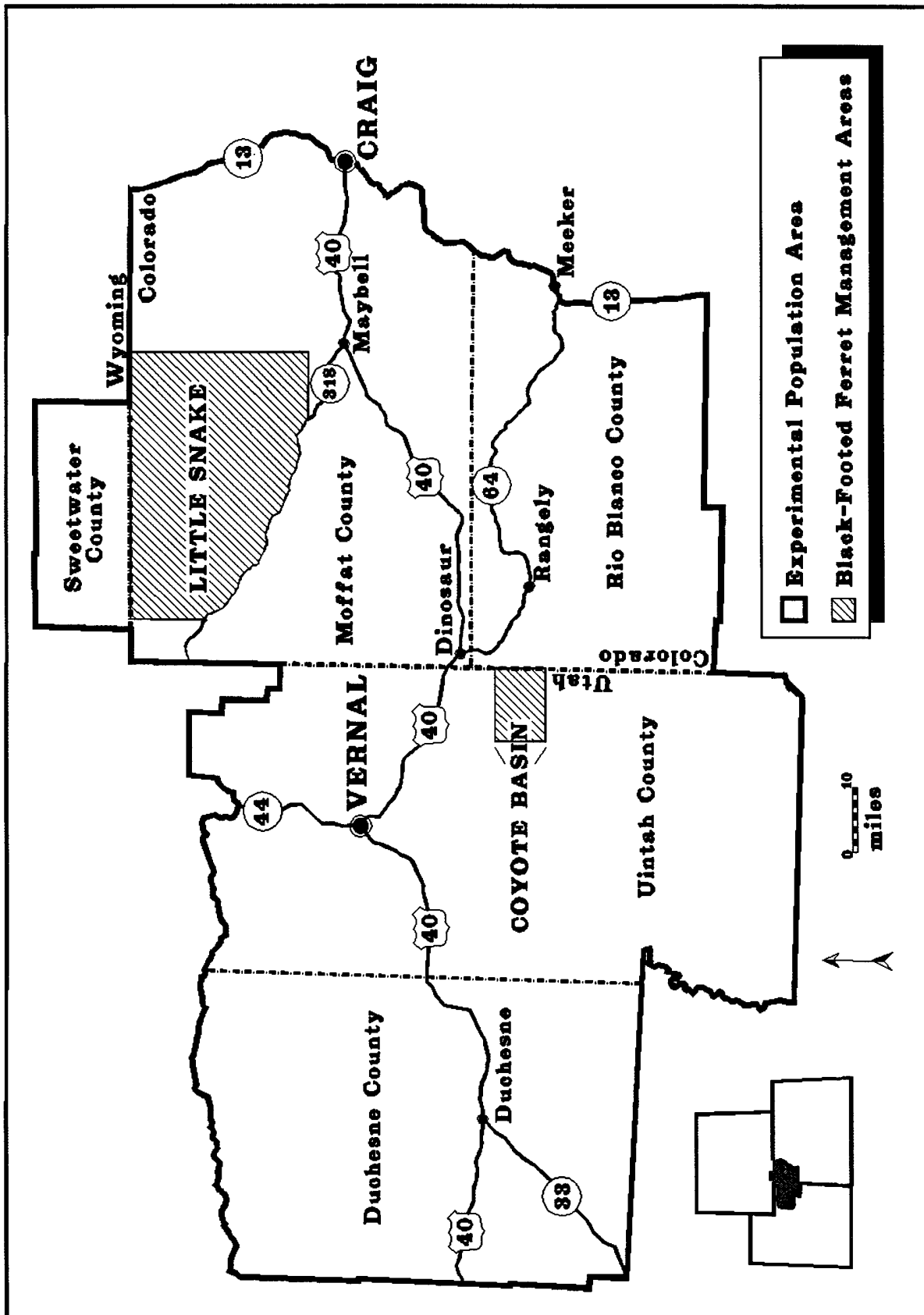
(12) This 5-year evaluation will not include a reevaluation of the "nonessential experimental" designation for these populations. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of any population. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on their lands will be permitted to terminate their consent, and at their request, the ferrets will be relocated pursuant to paragraph (g)(4)(iii) of this section.

* * * * *

BILLING CODE 4310-55-P

§ 17.84 [Amended]

4. It is proposed to amend section 17.84 by adding a map to follow the existing maps at the end of this paragraph (g).



Dated: March 23, 1997.

Don Barry,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 97-10978 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 041897B]

RIN 0648-AH52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before June 30, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 9, which includes a regulatory impact review, an initial regulatory flexibility analysis, a social impact analysis, and a supplemental final environmental impact statement, and of a minority report submitted by three Council members, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite

1000, Tampa, FL 33619-2266; Phone: 813-228-2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to the Secretary of Commerce for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 9 would: (1) Require, with limited exceptions, the use of certified bycatch reduction devices (BRDs) in shrimp trawls in the exclusive economic zone of the Gulf of Mexico shoreward of the 100-fathom (183-m) depth contour west of 85°30' W. long.; (2) set the red snapper bycatch mortality reduction criterion for NMFS' certification of BRDs at 44 percent; and (3) establish an FMP framework rulemaking procedure for modifying the bycatch reduction criterion, establishing and modifying the BRD testing protocol, and certifying BRDs and their specifications.

The Council's stated purpose for Amendment 9 is to reduce the unwanted bycatch of juvenile red snapper in the Gulf of Mexico shrimp trawl fishery and, to the extent practicable, not adversely affect this fishery. Amendment 9 indicates that its major goal is to achieve a 50 percent reduction in juvenile red snapper bycatch mortality in shrimp trawls compared to a defined baseline period. The red snapper stock in the Gulf of Mexico is considered overfished and is under a long-term rebuilding program established by the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. A significant reduction in the shrimp fishery bycatch mortality of red snapper is considered necessary to ensure recovery of the red snapper

resource consistent with its established stock rebuilding schedule.

Three Council members submitted a minority report opposing Amendment 9. The minority report reads, in part, as follows:

We believe that the Council's action to approve Amendment 9 did not consider the best available data, and the Council made serious procedural and legal errors in proceeding with the approval of Amendment 9. We also contend that Amendment 9 is not needed for the recovery of the red snapper stocks, the shrimp industry is being unfairly required to bear a regulatory burden, and the economic impacts of requiring bycatch reduction devices in shrimp trawls will be severe to both the industry and the United States.

The contentions of the three Council members are detailed in the minority report, which is available from the Council (see **ADDRESSES**).

A proposed rule to implement Amendment 9 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 9, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

Comments received by June 30, 1997, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 9. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 9 or on the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 23, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-10943 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 62, No. 82

Tuesday, April 29, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice on Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5(a) and 36 CFR 217.5(d), the public shall be advised, through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

In addition, the Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215

shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30367-9102, Phone: 404-347-4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR Part 217 and Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purpose of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico, or only one Ranger District will appear in the principal newspaper elected by the

National Forest of that state or Ranger District.

National Forest in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL.

District Ranger Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL.

Conecuh Ranger District: The Andalusia Star, published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District, The Tuscaloosa News, published daily in Tuscaloosa, AL.

Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.

Talladega Ranger District: The Daily Home, published daily in Talladega, AL.

Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR.

San Juan Star, published daily in English in San Juan, PR.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA.

District Ranger Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in Lafayette, GA.

Toccoa Ranger District: The News Observer published weekly (Wednesday) in Blue Ridge, GA.

Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA.

Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA.

Chattooga Ranger District: Northeast Georgian, published weekly (Tuesday) in Cornelia, GA.

Chieftain & Toccoa Record, published weekly (Thursday) in Toccoa, GA.

White County News & Telegraph, published weekly (Thursday) in Cleveland, GA.

Cohutta Ranger District: Chatsworth Times, published weekly (Wednesday) in Chatsworth, GA.

Oconee Ranger District: Monticello News, published weekly (Thursday) in Monticello, GA.

Cherokee National Forest, Tennessee
Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties).

Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties).

District Ranger Decisions

Ocoee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN.

Hiwassee Ranger District: Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN.

Tellico Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN.

Nolichucky Ranger District: Greeneville Sun, published daily (Monday–Saturday) in Greeneville, TN.

Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN.

Watauga Ranger District: Elizabethton Star, published daily (Sunday–Friday) in Elizabethton, TN.

Daniel Boone National Forest, Kentucky
Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY.

District Ranger Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY.

Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Stanton, KY.

Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY.

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.

Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY.

Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY.

Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY.

National Forests in Florida, Florida
Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions

Apalachicola Ranger District: The Liberty Journal, published weekly (Wednesday) in Bristol, FL.

Lake George Ranger District: the Ocala Star Banner, published daily in Ocala, FL.

Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.

Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL.

Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forest, South Carolina
Forest Supervisor Decisions

The State, published daily in Columbia, SC.

District Ranger Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.

Andrew Pickens Ranger District: Seneca Journal and Tribune, published bi-weekly (Wednesday and Friday) in Seneca, SC.

Long Cane Ranger District: The Augusta Chronicle, published daily in Augusta, GA.

Wambaw Ranger District: News and Courier, published daily in Charleston, SC.

Witherbee Ranger District: News and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia
Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA.

District Ranger Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.

Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA.

Pedlar Ranger District: News-Gazette, published weekly (Wednesday) in Lexington, VA.

James River Ranger District: Virginian Review, published weekly (except Sunday) in Covington, VA.

Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA.

Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA.

Blacksburg Ranger District: Roanoke Times, published daily in Roanoke, VA.

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the Roanoke Times and Monroe Watchman.).

Glenwood Ranger District: Roanoke Times, published daily in Roanoke, VA.

New Castle Ranger District: Roanoke Times, published daily in Roanoke, VA.

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the Roanoke Times and Monroe Watchman.).

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA.

Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN.

Wythe Ranger District: Southwest Virginia Enterprise, published bi-weekly (Wednesday and Saturday) in Wytheville, VA.

Kistachie National Forest, Louisiana
Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA.

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA.

Homer Guardian Journal, published weekly (Wednesday) in Homer, LA.

Catahoula Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA.

Colfax Chronicle, published weekly (Wednesday) in Colfax, LA.

Evangeline Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA.

Kisatchie Ranger District: Natchitoches Times, published weekly (Tuesday–Friday and on Sunday) in Natchitoches, LA.

Vernon Ranger District: Leesville Leader, published daily in Leesville, LA.

Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

National Forests in Mississippi, Mississippi
Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS.

De Soto Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS.

Ashe-Erambert Project: Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC.

District Ranger Decisions

Appalachian Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC.

Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC.

Grandfather Ranger District: McDowell News, published daily in Marion, NC.

Highlands Ranger District: The Highlander, published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Highlands, NC.

The Crossroads Chronicle published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Cashiers, NC The Sylvia Herald, published weekly on Thursday in Sylva, NC.

Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.

Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC.

Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC.

Wayah Ranger District: The Franklin Press, published bi-weekly (Wednesday and Friday) in Franklin, NC.

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisory Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Jessieville Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Mena Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Poteau Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK.

Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK.

Tiaki Ranger District: Tulsa World, published daily in Tulsa, OK.

Ozark-St. Francis National Forest: Arkansas

Forest Supervisory Decisions

The Courier, published daily (Sunday through Friday) in Russellville, AR.

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR.

Buffalo Ranger District: Newton County Times, published weekly (Thursday) in Jasper, AR.

Bayou Ranger District: The Courier, published daily (Sunday through Friday) in Russellville, AR.

Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.

Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR.

Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR.

St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX.

District Ranger Decisions

Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX.

Sam Houston National Forest: The Courier, published daily in Conroe, TX.

Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX.

Dated: April 16, 1997.

R.F. Carpenter,

Deputy Regional Forester for Operations.

[FR Doc. 97-10970 Filed 4-28-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Payen, English, and Pass Creek Range Allotments, Tahoe National Forest, Nevada and Sierra Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Tahoe National Forest will prepare an environmental impact statement (EIS) to evaluate three grazing allotments. The analysis will lay the groundwork for amending the Allotment Management Plans (AMPs) by determining what levels of livestock will be allowed on the land, the allowable amount of vegetation that can be grazed, the timing of grazing, and the methods to control the distribution of livestock on the allotments. The allotments are located on the Sierraville Ranger District, Sierraville, California, in portions of T19N, R12E-R17E, MDB&M.

The primary objectives of the proposals are to: (1) Manage grazing to ensure that affected vegetation, including the woody and shrub components are maintaining sustainable, diverse, and healthy plant communities; (2) where areas are degraded, manage grazing to restore trend towards, and subsequently maintaining, the ecological health of these areas such that they attain desired conditions within then years; (3) manage grazing to provide for and maintain necessary habitats for diverse populations of plant and animal species, including those that are sensitive, threatened, or endangered; (4) manage grazing so that precipitation is able to

enter the soil surface at appropriate rates, the soil is adequately protected against accelerated erosion, and fertility is maintained at appropriate levels; (5) manage grazing to maintain the integrity of streambanks and ensure that where streambank conditions have been degraded, the level of use will allow for increased stability and an upward trend; and (6) develop a set of grazing strategies in conjunction with the above objectives that would maintain economical and sustainable operations.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and received by May 23, 1997.

ADDRESSES: Written comments concerning the project should be directed to Sam Wilbanks, District Ranger, Sierraville Ranger District, PO Box 95, Sierraville, CA 96126.

FOR FURTHER INFORMATION CONTACT: Sam Wilbanks, District Ranger, Sierraville Ranger District, Sierraville, CA 96126, telephone (916) 994-3401, or Jerry Sirski, Project Team Leader, at (916) 994-3401.

SUPPLEMENTARY INFORMATION: Review of the three permits is important in order to conserve riparian habitats, meadow systems, fish and wildlife habitats, and other resources. In addition, Congress has mandated, under Public Law 104-19, to conduct this review using procedures specified in the National Environmental Policy Act (NEPA). This analysis will lay the groundwork for amending the Allotment Management Plan (AWPs) of these three areas. All three plans are out of date. The Payen AMP is 20 years old; the Pass Creek and English AMP's were originally part of a larger plan that is 40 years old. In the time since these plans were approved, new scientific information on the management of rangeland and aquatic ecosystems has been developed. Although permits have been adjusted over the years to adapt to new information, revision of the current AMPs is in order.

In preparing the environmental impact statement, the Forest Service will identify and analyze a range of alternatives that address the issues developed for the respective allotments. One of the alternatives will be no grazing. Other alternatives will consider differing levels of grazing. An ecological approach will be used as part of this

analysis. This means that the needs of people and environmental values will be blended in such a way that this area's desired condition would represent a diverse, healthy, productive, and sustainable ecosystem.

Public participation will be important during the analysis, especially during the review of the draft environmental impact statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement. The scoping process includes:

1. Identifying potential issues.
 2. Identifying issues to be analyzed in depth.
 3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
 4. Exploring additional alternatives.
 5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
 6. Determining potential cooperating agencies and task assignments.
- The following list of issues has been identified through initial scoping:
- (1) What should be the permitted capacity for each allotment?
 - (2) Should the inactive unit of the Pass Creek Allotment be stocked with livestock?
 - (3) What is the appropriate class of livestock for each allotment?
 - (4) How will livestock be managed on each allotment?
 - (5) What is the proper season of use?
 - (6) What improvements are needed?
 - (7) What variables should be monitored in the monitoring plan?

Comments from other Federal, State and local agencies, organizations, and individuals who may be interested in, or affected by the decision, are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to potentially interested or affected mining claim owners, private land owners, and special use permittees on the Sierraville Ranger District; posting information in local towns; and mailing letters to local permittees, politicians, school boards, county supervisors, and environmental groups. Continued participation will be emphasized through individual contacts. Public meetings, depending on interest, will be used as a method public involvement during preparation and review of the draft environmental impact statement and will be

announced in newspapers of general circulation in the geographic area well in advance of scheduled dates.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July, 1997. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of the court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is expected to be available by October, 1997. The responsible official is Sam J. Wilbanks, District Ranger, Sierraville Ranger District, Tahoe National Forest.

Dated: April 18, 1997.

John H. Skinner,
Forest Supervisor.

[FR Doc. 97-10955 Filed 4-28-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

**Submission for OMB Review;
Comment Request**

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Federal Fisheries Permits.

Agency Form Number: NOAA 88-155.

OMB Approval Number: 0648-0206.

Type of Request: Extension of a currently approved collection.

Burden: 465 hours.

Avg. Hours Per Response: Ranges between 20 minutes and 20 hours depending on the requirement.

Number of Respondents: 943 respondents.

Needs and Uses: Fishermen and processors wanting to fish in regulated fisheries in the Exclusive Economic Zone off Alaska must obtain either a Federal Fisheries Permit, a Federal Processor Permit, a High Seas Power Troller Permit, or an Experimental Fishing Permit for certain activities. The application information is used to the analysis of alternative management controls and to have information on permit holders for enforcement purposes.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: Triennial, varies.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Brett Hauber (202) 395-6466.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brett Hauber, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 23, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer.

[FR Doc. 97-10926 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

**Submission for OMB Review;
Comment Request**

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Logbook Family of Forms.

Agency Form Number: None assigned.

OMB Approval Number: 0648-0214.

Type of Request: Extension of a currently approved collection.

Burden: 1,130 hours.

Avg. Hours Per Response: Ranges between 5 minutes and 4 hours depending on the requirement.

Number of Respondents: 174 respondents (14,099 responses).

Needs and Uses: Persons participating in Federally-managed fisheries in the western Pacific Ocean are required to provide information about their fishing activities. Logbook reports are used in stock assessments and fishery evaluations to determine whether management is working and the impacts of alternative changes in management measures. Notification requirements are in place to facilitate placement of observers as needed and to improve compliance monitoring and enforcement. Experimental fishing reports are required to determine if the specially permitted fishing is successful and whether there are broader potential applications of the tested gear or techniques. Post-fishing notices are required to ensure the ability to monitor landings and sample the landed catch for necessary species, size, or sex composition and condition. Without these data, the potential for overfishing is high and management has to be more conservative than otherwise to safeguard against overfishing.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: On occasion, variable.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Brett Hauber, (202) 395-6466.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to Brett Hauber, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: April 23, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97-10927 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

**Submission for OMB Review;
Comment Request**

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Economic Census Covering the Mineral Industries Sector.

Form Number(s): MI-1001, -1002, -1101, -1201, -1301, -1302, -1303, -1371, -1401, -1402, -1403, -1471.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 59,670 hours in FY 1998.

Number of Respondents: 17,000.

Avg Hours Per Response: Long forms—3.8 hours; Short forms—2.1 hours.

Needs and Uses: The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 1997 Economic Census will cover virtually every sector of the U. S. economy including approximately 29,000 establishments in the mineral industries sector.

The information collected from establishments in this sector of the economy via long- (large companies) and short-forms (small companies) and from Federal administrative records (very small companies) will produce basic statistics for number of establishments, shipments, payroll, employment, detailed supplies and fuels consumed, depreciable assets, and capital expenditures. It also will yield a variety of subject statistics, including shipments by product line, type of operation, and other industry-specific measures.

Affected Public: Businesses or other for-profit.

Frequency: One time.

Respondent's Obligation: Mandatory.
Legal Authority: Title 13 USC,
Sections 131 and 224.

OMB Desk Officer: Jerry Coffey, (202)
395-7314.

Copies of the above information
collection proposal can be obtained by
calling or writing Linda Engelmeier,
DOC Forms Clearance Officer, (202)
482-3272, Department of Commerce,
room 5327, 14th and Constitution
Avenue, NW., Washington, DC 20230.

Written comments and
recommendations for the proposed
information collection should be sent
within 30 days of publication of this
notice to Jerry Coffey, OMB Desk
Officer, room 10201, New Executive
Office Building, Washington, DC 20503.

Dated: April 21, 1997.

Linda Engelmeier,

*Departmental Forms Clearance Officer, Office
of Management and Organization.*

[FR Doc. 97-10929 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation Wave 6 of the 1996 Panel

ACTION: Proposed collection; Comment
request.

SUMMARY: The Department of
Commerce, as part of its continuing
effort to reduce paperwork and
respondent burden, invites the general
public and other Federal agencies to
take this opportunity to comment on
proposed and/or continuing information
collections, as required by the
Paperwork Reduction Act of 1995,
Public Law 104-13 (44 U.S.C.
3506(c)(2)(A)).

DATES: Written comments must be
submitted on or before June 30, 1997.

ADDRESSES: Direct all written comments
to Linda Engelmeier, Departmental
Forms Clearance Officer, Department of
Commerce, Room 5327, 14th and
Constitution Avenue, NW. Washington,
DC 20230.

FOR FURTHER INFORMATION CONTACT:
Requests for additional information or
copies of the information collection
instrument(s) and instructions should
be directed to Michael McMahon,
Bureau of the Census, FOB 3, Room
3319, Washington, DC 20233-8400,
(301) 457-3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the
Survey of Income and Program

Participation (SIPP) which is a
household-based survey designed as a
continuous series of national panels,
each lasting four years. Respondents are
interviewed once every four months, in
monthly rotations. Approximately
37,000 households are in the current
panel. Each household contains, on
average, 2.08 eligible respondents.

The SIPP represents a source of
information for a wide variety of topics
and allows information for separate
topics to be integrated to form a single,
unified data base so that the interaction
between tax, transfer, and other
government and private policies can be
examined. Government domestic policy
formulators depend heavily upon SIPP
information concerning the distribution
of income received directly as money or
indirectly as in-kind benefits, and the
effect of tax and transfer programs on
this distribution. They also need
improved and expanded data on the
income and general economic and
financial situation of the U.S.
population. The SIPP has provided
these kinds of data on a continuing basis
since 1983, permitting levels of
economic well-being and changes in
these levels to be measured over time.

The survey is molded around a
central "core" of labor force and income
questions that will remain fixed
throughout the life of a panel. The core
is supplemented with questions
designed to answer specific needs, such
as obtaining information about the terms
of child support agreements and
whether they are being fulfilled by the
absent parent, examining the program
participation status of persons with
specific health and disability statuses,
and obtaining detailed information
needed to understand the current status
of the employment-based health care
system and changes that have occurred.
These supplemental questions are
included with the core and are referred
to as "topical modules."

The topical modules for the 1996
Panel Wave 6 collect information about:

- (1) Children's Well-Being
- (2) Assets, Liabilities, and Eligibility
- (3) Medical Expenses/Utilization of
Health Care (Adults/Children)
- (4) Work Related Expenses
- (5) Child Support Paid

Wave 6 interviews will be conducted
from December 1997 through March
1998.

II. Method of Collection

The SIPP is designed as a continuing
series of national panels of interviewed
households that are introduced every 4
years, with each panel having a duration
of 4 years in the survey. All household
members 15 years old or over are

interviewed using regular proxy-
respondent rules. They are interviewed
a total of 12 times (12 waves) at 4-month
intervals, making the SIPP a
longitudinal survey. Sample persons (all
household members present at the time
of the first interview) who move within
the country and reasonably close to a
SIPP Primary Sampling Unit (PSU) will
be followed and interviewed at their
new address. Persons 15 years old or
over who enter the household after
Wave 1 will be interviewed; however, if
these persons move, they are not
followed unless they happen to move
along with a Wave 1 sample person.
Interviews are conducted by Census
Bureau field representatives (FR) using
a computer assisted personal interview
(CAPI). To ensure quality of the FR's
work, 2,500 respondents are
reinterviewed during each wave.

III. Data

OMB Number: 0607-0813.

Form Number: SIPP/CAPI Automated
Instrument.

Type of Review: Regular.

Affected Public: Individuals or
Households.

Estimated Number of Respondents:
Interview—77,700; Reinterview—2,500.

Estimated Time Per Response:
Interview—30 minutes; Reinterview—
10 minutes.

*Estimated Total Annual Burden
Hours:*

Interview—116,550

Reinterview—1,250

Total—117,800.

Estimated Total Annual Cost:
Respondents' only cost is that of their
time to participate in the survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United
States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether
the proposed collection of information
is necessary for the proper performance
of the functions of the agency, including
whether the information shall have
practical utility; (b) the accuracy of the
agency's estimate of the burden
(including hours and cost) of the
proposed collection of information; (c)
ways to enhance the quality, utility, and
clarity of the information to be
collected; and (d) ways to minimize the
burden of the collection of information
on respondents, including through the
use of automated collection techniques
or other forms of information
technology.

Comments submitted in response to
this notice will be summarized and/or
included in the request for OMB
approval of this information collection;

they also will become a matter of public record.

Dated: April 23, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97-10928 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)-2-97]

Foreign-Trade Zone 45—Portland, OR; Request for Export Manufacturing Authority; GranPac Foods, Inc. (Frozen Food Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland, grantee of FTZ 45, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of GranPac Foods, Inc. (GranPac) (a subsidiary of Showa Sangyo Co., Ltd., Japan), for the manufacture/processing of frozen food products under FTZ procedures for export within FTZ 45. It was formally filed on April 22, 1997.

GranPac operates a 275,000 square foot food processing facility (35 employees) within FTZ 45—Site 1 (Rivergate Industrial Park) for the manufacture/processing of a variety of frozen food products, such as entrees, vegetables, soups, and sauces for the U.S. market and export. This application requests authority to allow GranPac to conduct manufacturing/processing under FTZ procedures for export of frozen oriental-style dinner entrees. These products will contain approximately 60 to 70 percent (by value) domestic ingredients. Between 30 and 40 percent of the ingredients will involve foreign sourced unprocessed lamb, beef (quota), pork, and vegetables (mushrooms, bamboo shoots, water chestnuts, pea pods) (duty rate range: free—6.6/kg+9.3%). The foreign-sourced products would be admitted to FTZ 45 under privileged foreign status (19 CFR § 146.41). U.S.-origin inputs include soy sauce, sugar, monosodium glutamate, disodium inoninate and guanylate, succinic acid, potassium sorbate, mirin, sake, sake yeast, fructose, corn syrup, starches, noodles, rice, wheat flour, soybeans, and sesame seed oil. All finished food products made under FTZ procedures would be exported.

FTZ procedures would exempt GranPac from U.S. beef quota requirements and Customs duty payments on the foreign ingredients

used in the export activity. Full duties and beef quota requirements would apply to any foreign status waste products that would be entered from FTZ 45 for U.S. consumption. The operation would continue to be subject to U.S. Department of Agriculture (USDA) production regulations. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 30, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 14, 1997).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 21, 1997

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-11015 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Determination Not To Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed

under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on January 31, 1997, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A-433-064

Austria

Railway Track Maintenance Equipment

Objection Date—February 28, 1997
Objector—Kershaw Manufacturing Co., Inc.

Contact: Paul Stolz at (202) 482-4474

A-428-807

Germany

Sodium Thiosulfate
Objection Date—February 26, 1997
Objector—Calabrian Corporation
Contact: Lyn Johnson at (202) 482-5287

A-588-816

Japan

Benzyl Paraben
Objection Date—February 24, 1997
Objector—ChemDesign Corporation
Contact: Leon McNeill at (202) 482-4236

A-588-602

Japan

Butt-Weld Pipe Fittings

Objection Date—February 12, 1997,
February 24, 1997Objector—Tube Forgings of America,
Inc. and Mills Iron Works, Inc.
Hackney, Inc.Contact: Sheila Forbes at (202) 482-
5253

A-588-056

Japan

Melamine

Objection Date—February 21, 1997

Objector—Melamine Chemicals Inc.

Contact: Todd Peterson at (202) 482-
4195

A-469-007

Spain

Potassium Permanganate

Objection Date—February 24, 1997

Objector—Carus Chemical Company

Contact: Tom Futtner at (202) 482-
3814

A-570-805

The People's Republic of China

Sodium Thiosulfate

Objection Date—February 26, 1997

Objector—Calabrian Corporation

Contact: Lyn Johnson at (202) 482-
5287

A-412-805

The United Kingdom

Sodium Thiosulfate

Objection Date—February 26, 1997

Objector—Calabrian Corporation

Contact: Lyn Johnson at (202) 482-
5287

A-307-803

Venezuela

Gray Portland Cement and Clinker

Objection Date—February 19, 1997,
February 25, 1997Objector—Puerto Rican Cement
Company, Inc., Florida Crushed
Stone Company, Southdown, Inc.,
and Tarmac America, Inc.Contact: Nithya Nagarajan at (202)
482-0193.

Dated: April 7, 1997.

Richard W. Moreland,*Acting Deputy Assistant Secretary for AD/
CVD Enforcement.*

[FR Doc. 97-11017 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-703]

**Granular Polytetrafluoroethylene Resin
From Italy; Amended Final Results of
Antidumping Duty Administrative
Review****AGENCY:** Import Administration,
International Trade Administration,
Department of Commerce.**ACTION:** Notice of Amended Final
Results of Antidumping Duty
Administrative Review.**SUMMARY:** On February 6, 1997, the
Department of Commerce (the
Department) published the final results
of administrative review of the
antidumping duty order on granular
polytetrafluoroethylene (PTFE) resin
from Italy (62 FR 5590). The review
covers one manufacturer/exporter,
Ausimont S.p.A. (Ausimont), for the
period August 1, 1994, through July 31,
1995. Based on the correction of
ministerial errors, we have changed the
margin for Ausimont.**EFFECTIVE DATE:** April 29, 1997.**FOR FURTHER INFORMATION CONTACT:**Chip Hayes or Richard Rimlinger,
Import Administration, International
Trade Administration, U.S. Department
of Commerce, 14th and Constitution
Avenue, NW., Washington, DC. 20230;
telephone: (202) 482-4733.**SUPPLEMENTARY INFORMATION:****The Applicable Statute**Unless otherwise indicated, all
citations to the Tariff Act of 1930, as
amended (the Tariff Act), are references
to the provisions effective January 1,
1995, the effective date of the
amendments made to the Tariff Act by
the Uruguay Round Agreements Act. In
addition, unless otherwise indicated, all
citations to the Department's regulations
are to the current regulations, as
amended by the interim regulations
published in the **Federal Register** on
May 11, 1995 (60 FR 25130).**Background**On February 6, 1997, the Department
published the final results of its
administrative review of the
antidumping duty order on PTFE resin
from Italy (62 FR 5590) for one
manufacturer/exporter, Ausimont, and
the period of review (POR) August 1,
1994, through July 31, 1995.After publication of our final results,
we received timely allegations from
Ausimont that we had made ministerial
errors in calculating the final results.Ausimont contends that we applied
facts available in the calculation of a
difference-in-merchandise adjustment
for sales of one U.S. product, when,
according to Ausimont, variable cost of
manufacturing information for that
product was in the administrative
record to permit a correct calculation of
the adjustment. E.I. Dupont de Nemours
and Co., the petitioner in this
proceeding, maintains that Ausimont
neglected to comment on the use of facts
available during the course of the
administrative review and that
Ausimont's belated discovery does not
constitute a ministerial error on the part
of the Department.Upon examination of the
administrative record, we have
determined that adequate information
was in the administrative record to
calculate the correct difference-in-
merchandise adjustment for the product
in question. Therefore, the use of facts
available to determine the adjustment
for the product does constitute a
ministerial error. We have corrected our
calculations in accordance with section
751(h) of the Tariff Act. See analysis
memorandum to the file dated March
24, 1997, for a detailed description of
the changes that we made to correct the
ministerial errors.**Amended Final Results of Reviews**As a result of our corrections for
ministerial errors, we determine that the
a weighted-average margin of 15.21 per
cent exists for the period August 1,
1994, through July 31, 1995.The Department shall determine, and
the Customs Service shall assess,
antidumping duties on all appropriate
entries. We will direct the Customs
Service to collect cash deposits of
estimated antidumping duties on all
appropriate entries in accordance with
the procedures discussed in the final
results of the reviews (62 FR 5590, 5592)
and as amended by this determination.The amended deposit requirements
are effective for all shipments of the
subject merchandise entered, or
withdrawn from warehouse, for
consumption on or after the date of
publication of this notice and shall
remain in effect until publication of the
final results of the next administrative
reviews.This notice also serves as a final
reminder to importers of their
responsibility under 19 CFR 353.26 to
file a certificate regarding the
reimbursement of antidumping duties
prior to liquidation of the relevant
entries during this review period.
Failure to comply with this requirement
could result in the Secretary's
presumption that reimbursement of

antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28.

Dated April 22, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-11016 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-508-605]

Certain Industrial Phosphoric Acid from Israel; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for countervailing duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the 1995 administrative review of the countervailing duty order on certain industrial phosphoric acid from Israel. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2786.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. The Department finds that it is not practicable to complete the calendar year 1995 administrative review of

industrial phosphoric acid from the Israel within this time limit. See *Memorandum to the File* dated April 22, 1997.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the preliminary results of this review from May 5, 1997 to no later than August 31, 1997.

Dated: April 22, 1997.

Jeffrey P. Bialos,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 97-11014 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-404]

Live Swine from Canada; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of time Limit for Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for preliminary results of the eleventh administrative review of the countervailing duty order on live swine from Canada. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC, 20230; telephone (202) 482-2786.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. The Department finds that it is not practicable to complete the 1995-96 administrative review of live swine from Canada within this time limit. See *Memorandum to the File* dated April 22, 1997.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the preliminary results of this review

from May 5, 1997 to no later than August 31, 1997.

Dated: April 22, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97-11013 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

Intent To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of May 1997.

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty order listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke the order pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's

notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the

revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a

domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing duty order

Brazil: Construction Castings (C-351-504) 05/09/86
57 FR 2252

Opportunity to Object

Not later than the last day of May 1997, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to a revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: April 22, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97-11012 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Alaska Region Vessel Permit Moratorium

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of

Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to the National Marine Fisheries Service, Alaska Regional Office, P.O. Box 21668, Juneau, Alaska 99882-1668 (907-586-7228).

SUPPLEMENTARY INFORMATION

I. Abstract

The Moratorium on Entry imposes a temporary moratorium on the entry of new (unqualified) vessels into the groundfish fisheries under Federal jurisdiction in the Bering Sea and Aleutian Islands management area, the groundfish fisheries under Federal Management in the Gulf of Alaska, and the crab fisheries under Federal jurisdiction in the Bering Sea/Aleutian Islands. An owner of qualified vessels must apply for and receive a permit from NMFS before deploying that vessel in one of the above named fisheries. This permit requirement is essential to the purpose of the Moratorium on Entry, which is to curtail increases in fishing capacity and provide industry stability. The Moratorium on Entry is intended to promote the conservation and management objectives of the North Pacific Fishery Management Council and the Magnuson-Stevens Fishery Conservation and Management Act.

II. Method of Collection

Applicants submit a form and any supporting documentation necessary in order to receive a Moratorium on Entry permit, which is a mandatory requirement for an owner deploying a qualified vessel in the fisheries under Federal jurisdiction as specified above.

III. Data

OMB Number: 0648-0282.

Form Number: N/A.

Type of Review: Regular Submission.

Affected Public: All owners of qualified vessels planning to deploy vessels in fisheries affected by the Moratorium on Entry.

Estimated Number of Respondents: 638.

Estimated Time Per Response: 0.46 hours.

Estimated Total Annual Burden Hours: 293 hours.

Estimated Total Annual Cost to Public: \$0 (no material or equipment will need to be purchased to provide information).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 22, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97-10924 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Fisheries Certificate of Origin

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to the National Marine Fisheries Service, Southwest Regional Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562-980-4019).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the collection of information is to comply with the requirements of the Marine Mammal Protection Act. The Act requires the Secretary of Commerce to promulgate regulations restricting the importation of tuna from those nations without a marine mammal protection program comparable to that of the United States. In addition, tuna that is not dolphin-safe cannot be transported or sold in the United States. The collection serves three purposes: (1) documents that the shipment is dolphin safe, (2) verifies that the fish was not harvested by large-scale high seas driftnets, and (3) verifies that tuna was not harvested by a nation under primary or secondary embargo.

II. Method of Collection

Forms are submitted by foreign exporters or domestic importers for shipments entering the United States. Forms must be accompanied by statements from vessel Captains that the fish were harvested outside of the Eastern Tropical Pacific Ocean and that no purse seine net was intentionally deployed on or encircled dolphins on the particular voyage on which the tuna were harvested.

III. Data

OMB Number: None (currently covered by 0648-0040, but requirements under that number are being separated and a new number may be assigned upon approval).

Form Number: NOAA Form 370.

Type of Review: Regular Submission.

Affected Public: Fish processors and importers/exporters, fishery vessel Captains.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 20 minutes for processors and importers/exporters, 5 minutes for vessel Captains.

Estimated Total Annual Burden Hours: 1,033 hours.

Estimated Total Annual Cost to Public: \$0 (no material or equipment will need to be purchased to provide information).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 22, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97-10925 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 960223046-7083-02; I.D. 031897A]

RIN 0648-ZA09

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS issues this document describing the conditions under which applications will be accepted under the

Saltonstall-Kennedy (S-K) Grant Program and how NMFS will select applications for funding. Some of the conditions and procedures have changed significantly from the last S-K Program solicitation notice of March 19, 1996.

The S-K Grant Program assists eligible applicants in carrying out research and development projects that address aspects of U.S. fisheries (commercial or recreational), including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

DATES: Applications must be received by close of business June 30, 1997, in one of the offices listed in **ADDRESSES**. Applicants must submit one signed original and nine signed copies of the completed application (including supporting information). No facsimile applications will be accepted.

ADDRESSES: Application packages can be obtained from, and completed applications sent to any office listed below:

Regional Administrator, NMFS, One Blackburn Drive, Gloucester, MA 01930; telephone: (508) 281-9267.

Regional Administrator, NMFS, Koger Bldg., 9721 Executive Center Drive, North, St. Petersburg, FL 33702; telephone: (813) 570-5324.

Regional Administrator, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213; telephone: (310) 980-4033.

Regional Administrator, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115; telephone: (206) 526-6117.

Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802, or Federal Building, 709 W. 9th Street, 4th Floor, Juneau, AK 99801; telephone: (907) 586-7224.

This solicitation notice may also be retrieved from the NMFS Home Page.

FOR FURTHER INFORMATION CONTACT: Alicia L. Jarboe, S-K Program Manager, (301) 713-2358.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The S-K Act, as amended (15 U.S.C. 713c-3), provides that a fund (known as the S-K fund) will be used by the Secretary of Commerce to provide grants for fisheries research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures. U.S. fisheries¹ include

¹ For purposes of this document, a fishery is defined as one or more stocks of fish, including

any fishery that is or may be engaged in by citizens or nationals of the United States, or citizens of the Northern Mariana Islands, the Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia.

The funding priorities of the S-K Grant Program have evolved over the years since the program began in 1980. The original focus of the program was on development of underutilized fisheries within the U.S. Exclusive Economic Zone (EEZ). The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), originally passed in 1976, directed NMFS to provide the domestic fishing industry priority access to the fishery resources in the EEZ. In an attempt to accelerate development of domestic fisheries, the American Fisheries Promotion Act of 1980 amended the S-K Act to stimulate commercial and recreational fishing efforts in underutilized fisheries.

In the ensuing years, the efforts to Americanize the fisheries were successful to the point that most nontraditional species were fully developed and traditional fisheries became overfished. Therefore, the S-K Program priorities evolved to include a wide range of resource conservation and management issues and aquaculture.

In 1993, NOAA developed a long-range Strategic Plan that included a focus on rebuilding fisheries for sustainable use. The NOAA Strategic Plan strengthened the basis for the continued shift in the priorities of the S-K Program toward such issues as overfishing and bycatch.

Passage in 1996 of the Sustainable Fisheries Act (Public Law 104-297), which amended the Magnuson-Stevens Act, supports further adjustment to the S-K Program to address the current condition of fisheries.

The Magnuson-Stevens Act recognizes that U.S. fisheries face many problems. It also recognizes the adverse effects of fishing in terms of bycatch of nontarget species, and habitat impacts. The Act requires that overfishing be stopped and that the problems of U.S. fisheries be corrected. Specifically, the Magnuson-Stevens Act requires NMFS to undertake efforts to prevent overfishing, rebuild overfished fisheries, insure conservation, protect essential fish habitats, and realize the full potential of U.S. fishery resources. However, the Act also acknowledges the

potential adverse impacts on people in making such corrections. Therefore, it requires that conservation and management measures, consistent with conservation requirements of the Act, take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities and, to the extent practicable, minimize adverse economic impacts on such communities. A "fishing community" is defined in the Magnuson-Stevens Act as "a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community." (16 U.S.C. 1802.)

The 1998 S-K Grant Program announced under this notice will address the needs of fishing communities in optimizing economic benefits within the context of rebuilding and maintaining sustainable fisheries and in dealing with the impacts of conservation and management measures. The funding priorities listed under section II of this notice identify areas of research and development that relate to these needs.

While the S-K Program continues to be open to applicants from a variety of sectors, including industry, academia, and state and local governments, successful applicants will be those whose projects demonstrate significant direct benefits to fishing communities.

B. Funding

NMFS issues this document to solicit applications for Federal assistance, pursuant to 15 U.S.C. 713c-3(c), describing the conditions under which applications will be accepted under the S-K Grant program and how NMFS will select the applications it will fund.

This notice is published subject to, and funding of projects is contingent upon, the appropriation of funds by Congress for this program in Fiscal Year (FY) 1998, which begins on October 1, 1997. The Administration's request for the S-K Grant Program for FY 1998 is \$4 million, which will be used to support projects solicited under this document.

Funding under the program will be provided for research, development, and technology transfer activities that address the funding priorities listed in section II. Funding will not be provided for projects that primarily involve infrastructure construction, port and harbor development, and start-up or operational costs for private business ventures. Furthermore, projects primarily involving data collection

should be directed to a specific problem or need and be of a fixed duration, not of a continuing nature, in order to be considered.

C. Catalogue of Federal Domestic Assistance

The S-K Grant Program is listed in the "Catalogue of Federal Domestic Assistance" under number 11.427, Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program.

II. Funding Priorities

Applicants should ensure that their proposals address one or more of the following priorities, which are listed in no particular order:

A. Minimize Interactions Between Fisheries and Protected or Non-Targeted Species

Develop methods to eliminate or reduce adverse interactions between fishing operations and nontargeted, protected, or prohibited species (e.g., juvenile or sublegal-sized fish and shellfish, females of certain crabs, marine turtles, seabirds, or marine mammals), including the inadvertent take, capture, or destruction of such species.

Conduct research on behavioral responses of both target and nontarget marine organisms to fishing gear and practices, in order to facilitate the design of gear and practices to actively avoid nontarget organisms.

Develop methods to improve the survivability of fish discarded and protected species released in fishing operations, including modifications in gear, fishing practices, and handling practices to reduce the detrimental effects of capture, and develop methods to assess both the immediate and delayed mortality associated with capture.

Develop reliable methods to assess or record the extent and composition of fisheries bycatch, especially onboard vessels, to reduce the need for labor-intensive and expensive onboard observer programs.

B. Rebuild Overfished Fisheries

Develop scientific information, plans, procedures, and methods that contribute to the rebuilding of overfished fisheries, including information on status of overfished stocks, prototype capacity reduction programs, and projects that facilitate the development of rebuilding plans for fisheries.

Develop innovative approaches to address the transition of fishing communities affected by declines in traditional fisheries toward alternate

tuna, and shellfish that are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, and eastern oysters.

employment or new business opportunities. NMFS is not soliciting proposals solely involving start-up or operational costs for individuals or individual businesses.

C. Maintain Healthy Fish Stocks

Conduct biological, economic, social, and other studies to support the development of sound management practices for important recreational and commercial species.

Develop innovative approaches to improve fisheries management, including but not limited to, assessment of alternative management systems and resolution of user conflicts.

D. Obtain Maximum Social and Economic Benefits from Harvestable Marine Resources

Contribute to the development of commercial and recreational fisheries for underutilized or non-utilized species of potential economic importance, while maintaining long-term sustainability.

Optimize the utilization of harvestable resources available to the fishing industry through innovations in how such resources are harvested, processed, or marketed.

Develop marketable products from economic discards, either whole fish discarded because they are an undesirable species, size, or sex, or parts of fish discarded as not commercially useful.

Develop improved approaches to control environmental hazards which affect fishery resource health and the safety of harvested fish and their products for human consumption.

E. Promote Aquaculture Development

Develop or demonstrate cost-effective approaches for advancing environmentally sound public and private aquaculture for food, enhancement, industrial, and other purposes.

Develop and evaluate strategies for culturing systems, disease control, and reducing the potential for negative interactions between cultured and wild stocks.

Develop models for aquaculture regulation that address the impediments to development caused by current regulatory processes.

F. Conserve and Enhance Essential Fish Habitat

Develop information needed by fisheries managers on the identification and status of essential fish habitat.

Develop scientific approaches to assess and reduce human induced impacts on habitat.

If proposals received do not adequately respond to the above listed

priorities, NMFS may carry out, in addition to the program announced by this document, a national program of research and development addressed to aspects of U.S. fisheries pursuant to section 713c-3(d) of the S-K Act, as amended.

III. How to Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries research and development projects may be made, in accordance with the procedures set forth in this document, by:

1. Any individual who is a citizen or national of the United States;
2. Any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the constitution of the NMI;
3. Any individual who is a citizen of the Republic of the Marshall Islands, Republic of Palau, or the Federated States of Micronesia; or
4. Any corporation, partnership, association, or other non-Federal entity, non-profit or otherwise, if such entity is a citizen of the United States or NMI, within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. app. 802).

DOC/NOAA/NMFS are committed to cultural and gender diversity in their programs and encourage women and minority individuals and groups to submit applications. Recognizing the interest of the Secretaries of Commerce and Interior in defining appropriate fisheries policies and programs that meet the needs of the U.S. insular areas, applications from individuals, government entities, and businesses in U.S. insular areas are also encouraged. Furthermore, NMFS encourages applications from members of the fishing community, and applications that involve fishing community cooperation and participation. The extent of fishing community involvement will be considered by the Constituent Panel(s) evaluating the potential benefit of funding a proposal.

DOC/NOAA/NMFS employees, including full-time, part-time, and intermittent personnel are not eligible to submit an application under this solicitation or aid in the preparation of an application, except to provide information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, NMFS employees will not provide assistance in conceptualizing, developing, or

structuring proposals, or write letters of support for a proposal.

Employees of Federal agencies, and Regional Fishery Management Councils and their employees, are not eligible to submit an application under this solicitation.

B. Duration and Terms of Funding

Generally, grants or cooperative agreements are awarded for a period of 1 year but no more than 18 months at a time.

If an application for an award is selected for funding, NMFS has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Any subsequent proposal to continue work on an existing project must be submitted to the competitive process for consideration and will not receive preferential treatment. Renewal of an award to increase funding or extend the period of performance is at the total discretion of Commerce.

Publication of this announcement does not obligate NMFS to award any specific grant or cooperative agreement or to obligate any part or the entire amount of funds available.

C. Cost-Sharing

For this solicitation, NMFS is requiring cost-sharing in order to leverage limited funds and to encourage partnerships among government, industry, and academia to address the needs of fishing communities. A minimum of 10 percent up to a maximum of 50 percent cost-share is required. (NMFS must contribute at least 50 percent of total project costs, as provided by statute.) Applications that do not provide for at least the minimum cost-share will be returned to the applicant and will not receive further consideration.

The non-Federal share may include funds received from private sources or from state or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share except as provided by Federal statute. In-kind contributions are non-cash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, will be determined on the basis of guidance

provided in the relevant Office of Management and Budget (OMB) Circulars. In general, the value of in-kind services or property used to fulfill the applicant's cost-share will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Appropriate documentation must exist to support in-kind services or property used to fulfill the applicant's cost-share.

The degree to which cost-sharing exceeds the minimum level may be taken into account by the NOAA Assistant Administrator in the final selection of projects to be funded. Applicants whose proposals are selected for funding will be obligated to account for the amount of cost-share reflected in the award documents.

D. Format

Project applications must be clearly and completely submitted in the following format:

1. *Cover sheet:* An applicant must use OMB Standard Form 424 and 424B (4-92) as the cover sheet for each project. (In completing item 16 of Standard Form 424, see section V.A.5. of this document.)

2. *Project Summary:* An applicant must complete NOAA Form 88-204 (10-95), Project Summary, for each project. The specific priority(ies) contained in section II of this document to which the application responds must be listed on the Project Summary.

3. *Project Budget:* A budget must be submitted for each project, using NOAA Form 88-205 (10-95), Project Budget and associated instructions. The applicants must submit detailed cost estimates showing total project costs. Cost-sharing must be indicated as Federal and non-Federal shares, divided into cash and in-kind contributions. To support the budget, the applicant must describe briefly the basis for estimating the value of the cost-sharing derived from in-kind contributions. Estimates of the direct costs must be specified in the categories listed on the Project Budget form.

The budget may also include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. The Federal share of the indirect costs may

not exceed 25 percent of the total proposed direct costs. Applicants with approved indirect cost rates above 25 percent of the total proposed direct costs may use the amount above the 25 percent level up to the 100 percent level as part of the non-Federal share. A copy of the current, approved, negotiated indirect cost agreement with the Federal government must be included in the application.

NMFS will not consider fees or profits as allowable costs for applicants.

The total costs of a project consist of all allowable costs incurred, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are neither reimbursable nor recognizable as part of the cost-share.

4. *Narrative Project Description:* The narrative project description may be up to 15 pages in length. The narrative should demonstrate knowledge of relevant research and development activity, and demonstrate how the proposal builds upon any past and current work in the subject area, as well as relevant work in related fields. Each project must be described as follows:

a. *Project goals and objectives:* Identify the problem/opportunity to be addressed by the proposed project and what the project is expected to accomplish. Identify the specific priority(ies) to which the project responds. Indicate the size and economic value of the fisheries involved and the fishing community affected. If the application is for the continuation of a project previously funded under the S-K Program, describe in detail the progress to date and explain why additional funding is necessary.

b. *Need for government financial assistance:* Explain why government financial assistance is needed for the proposed work. List all other sources of funding that are being or have been sought for the project.

c. *Participation by persons or groups other than the applicant:* Describe the participation by government and non-government entities, particularly members of fishing communities, in the project, and the nature of such participation.

d. *Federal, state, and local government activities and permits:* List

any existing Federal, state, or local government programs or activities that this project would affect, including activities requiring certification under state Coastal Zone Management Plans, those requiring section 404 or section 10 permits issued by the Corps of Engineers, those requiring experimental fishing or other permits under fishery management plans, and those requiring scientific permits under the Endangered Species Act and/or the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities, and list names and addresses of persons providing this information.

e. *Project statement of work:* The statement of work is an action plan of activities to be conducted during the period of the project. This section requires the applicant to prepare a detailed narrative, fully describing the work to be performed that will achieve the previously articulated goals and objectives. The narrative should respond to the following questions:

(1) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will be undertaken?

(2) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting.)

(3) What are the major products? A milestone chart must be included which graphically illustrates the specific activities and associated time lines to conduct the scope of work. Time lines should be described in increments (e.g., month 1, month 2), rather than by specific dates. The individual(s) responsible for the various specific activities shall be identified.

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide sufficient detail. Applications lacking sufficient detail may be eliminated from further consideration.

f. *Project management:* Describe how the project will be organized and managed. Identify the principal participants in the project and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Provide a statement of the qualifications and experience (e.g., resume or curriculum vitae) of the principal investigator(s) and any consultants and/or subcontractors, and indicate their level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, applicants must follow procurement guidance in 15 CFR

part 24, "Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-110 for Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. Commercial organizations and individuals who apply should use OMB Circular A-110. If a consultant and/or subcontractor is selected prior to application submission, indicate the process used for selection.

g. Project impacts: Describe the anticipated impacts of the project on fishing communities in terms of reduced bycatch, increased product yield, or other measurable factors. Describe how the results of the project will be made available to the public.

h. Evaluation of project: Describe the procedures for evaluating the relative success or failure of a project in achieving its objectives.

5. Supporting documentation: This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed.

IV. Evaluation Criteria and Selection Procedures

A. Evaluation of Proposed Projects

1. Initial screening of applications: Upon receipt NMFS will screen applications for conformance with requirements set forth in this document. Applications that do not conform to the requirements may not be considered for further evaluation. In addition, proposals from ineligible applicants or those seeking funds primarily for infrastructure development and business costs will not be considered and will be returned to the applicant.

2. Consultation with interested parties: As appropriate, NMFS will consult with NMFS Offices, the NOAA Grants Management Division, Department and other Federal and state agencies, the Regional Fishery Management Councils, and other interested parties who may be affected by or have knowledge of a specific proposal or its subject matter.

3. Technical evaluation: NMFS will solicit individual technical evaluations of each project application from three or more appropriate private and public sector experts. These reviewers will assign scores ranging from a minimum of 60 (poor) to a maximum of 100 (excellent) to applications based on the following evaluation criteria, with weights shown in parentheses:

a. Soundness of project design/conceptual approach. Applications will

be evaluated on the fishing community need(s) to be addressed by the project; the conceptual approach; whether the applicant provided sufficient information to evaluate the project technically; and, if so, the strengths and/or weaknesses of the technical design relative to securing productive results. (50 percent)

b. Project management and experience and qualifications of personnel. The organization and management of the project, and the project's principal investigator and other personnel in terms of related experience and qualifications will be evaluated. The principal investigator must be identified in order for the application to be accepted. (25 percent)

c. Project evaluation. The effectiveness of the applicant's proposed methods to monitor and evaluate the success or failure of the project in terms of meeting its original objectives will be examined. (10 percent)

d. Project costs. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high or low project costs will be taken into account. (15 percent)

In addition to the above criteria, in reviewing applications that include consultants and contracts, NMFS will make a determination regarding the following:

(1) Is the involvement of the primary applicant necessary to the conduct of the project and the accomplishment of its objectives?

(2) Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

(3) Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

4. Constituent Panel(s): After the technical evaluation, individual comments will be solicited from a panel or panels of three or more representatives selected by the NOAA Assistant Administrator for Fisheries (AA), from the fishing industry, state government, and others, as appropriate, to evaluate and rank the projects.

Considered in the rankings, along with the technical evaluation, will be the significance of the problem or opportunity addressed in the project and the degree of involvement by fishing community members. Each panelist will rank the projects in terms of importance or need for funding, and provide recommendations on the level of funding NMFS should award and the merits of funding each project.

B. Selection Procedures and Project Funding

After projects have been evaluated and ranked, the reviewing NMFS offices will develop recommendations for project funding. These recommendations will be submitted to the AA who will determine the projects to be funded, ensuring that there is no duplication with other projects funded by NOAA or other Federal organizations, and that the projects selected for funding are those that best meet the objectives of the S-K Grant Program.

The exact amount of funds awarded to a project will be determined in preaward negotiations between the applicant and NOAA/NMFS program and grants management representatives. The funding instrument (grant or cooperative agreement) will be determined by the NOAA Grants Management Division. Projects should not be initiated in expectation of Federal funding until a notice of award document is received.

V. Administrative Requirements

A. Obligation of the Applicant

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the proposal, including one signed original and nine signed copies of the application.

2. Be available, upon request, to respond to questions during the review and evaluation of the proposal(s).

3. Complete Form CD-511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." The following explanations are provided:

a. Nonprocurement debarment and suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. Drug-free workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)," and the related section of the certification form prescribed above applies;

c. Anti-lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," and the lobbying section of the certification

form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. Anti-lobbying disclosures. Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

4. If applicable, require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to Commerce. An SF-LLL submitted by any tier recipient or subrecipient should be submitted to Commerce in accordance with the instructions contained in the award document. This requirement applies only to applicants whose applications are recommended for funding. All required forms will be provided to successful applicants.

5. Complete item 16 on Standard Form 424 (4-92) regarding clearance by the State Point Of Contact (SPOC) established as a result of E.O. 12372. A list of SPOCs may be obtained from any of the NMFS offices listed in this document (see **ADDRESSES**), and is also included in the "Catalog of Federal Domestic Assistance."

6. Complete Standard Form 424B (4-92), "Assurances—Non-construction Programs."

7. Complete the Financial Audit Information form.

B. Obligations of Successful Applicants (Recipients)

A recipient of a grant award for a project must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller General of the United States, or their authorized representatives.

3. Submit semiannual project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each 6-month period. These reports will be submitted to the individual specified as the NMFS Program Officer in the funding agreement.

4. Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable NMFS to assess the success of the completed project.

NMFS is committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, recipients are required to submit final reports in electronic format, in accordance with the award terms and conditions, for publication on the NMFS Home Page. Costs associated with preparing and transmitting final reports to NMFS in electronic format are appropriately funded from the grant award. Requests for exemption from this requirement may be considered by NMFS on a case-by-case basis.

Formats for the semiannual and final reports, which have been approved by OMB, will be provided to successful applicants.

5. In order for NMFS to assist the grantee in disseminating information, the grantee is requested to submit all publications printed with grant funds (in addition to the final report in V.B.4. above) to the NMFS Program Officer. Either three hard copies or an electronic version of any such publications should be submitted.

C. Other Requirements

1. *Federal policies and procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Name check review.* All recipients are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity.

3. *Financial management certification/preaward accounting survey.* Successful applicants for S-K funding, at the discretion of the NOAA Grants Officer, may be required to have

their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable OMB Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by Commerce prior to execution of the award.

4. *Past performance.* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

5. *Delinquent Federal debts.* No award of Federal funds shall be made to an applicant or to its subrecipients who have an outstanding delinquent Federal debt or fine until either:

a. The delinquent account is paid in full,

b. A negotiated repayment schedule is established and at least one payment is received, or

c. Other arrangements satisfactory to the Department of Commerce (Commerce) are made.

6. *Buy American.* Applicants are hereby notified that they are encouraged to the extent feasible to purchase American-made equipment and products with the funding provided under this program.

7. *Preaward activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of Commerce to cover preaward costs.

8. *False statements.* A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

This document contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB under control

number 0648-0135. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

A solicitation for applications will also appear in the "Commerce Business Daily."

Dated: April 23, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97-10997 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042297A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Summer Flounder Industry Advisory Subcommittee, Large Pelagic Committee, Demersal Species Committee, and Surfclam and Ocean Quahog Committee, with Surfclam and Ocean Quahog Industry Advisory Subcommittee will hold public meetings.

DATES: The meetings will be held on May 12-15, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Meadowlands Hilton, Two Harmon Plaza, Secaucus, NJ 07094; telephone: 201-348-6900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302-674-2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331.

SUPPLEMENTARY INFORMATION: On Monday, May 12, the Summer Flounder Industry Advisory Subcommittee will meet jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Summer Flounder Advisors beginning at 1:00 p.m. On Tuesday, May 13, the

Large Pelagic Committee will meet from 8:00 a.m. until 10:00 a.m. The Council will meet as a Demersal Species Committee of the Whole jointly with the ASMFC Summer Flounder, Scup, and Black Sea Bass Management Board beginning at 10:00 a.m. On Wednesday, May 14, the Council will meet from 8:00 a.m. until noon. The Council will meet as a Surfclam and Ocean Quahog Committee of the Whole from 1:00 p.m. until 5:00 p.m. On Thursday, May 15, the Council will meet from 8:00 a.m. until approximately noon.

The purpose of the meetings is to review proposed changes to federal regulations on large pelagics, discuss public comments on and possibly adopt for Secretarial approval Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass and Amendment 10 to the Surfclam and Ocean Quahog Fishery Management Plans, discuss and possibly adopt a control date for the Atlantic mackerel fishery, and other fishery management matters.

The above agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. The meetings may also be closed at any time to discuss employment or other internal administrative matters.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting dates.

Dated: April 23, 1997.

Gary C. Matlock, Ph.D.,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-10958 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042297E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Committee on Alternative Groundfish Management Strategies will hold a public meeting.

DATES: The meeting will be held on May 15, 1997, beginning at 8:00 a.m. and may go into the evening until business for the day is completed.

ADDRESSES: The meeting will be held at the Shilo Inn - Portland Airport, 11707 NE. Airport way, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The committee will discuss its operating procedures, meeting schedule, and alternative management approaches for the groundfish fishery off the West Coast. This is not a forum to discuss management of the fixed gear sablefish fishery.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: April 23, 1997.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-11035 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042197D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Pelagic Plan Team.

DATES: The meeting will be held on May 8-9, 1997, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Ala Moana Hotel, Ilima Room, 410 Atkinson Drive, Honolulu, HI; telephone: (808) 955-4811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522-8220.

SUPPLEMENTARY INFORMATION: The plan team will discuss and may make recommendations to the Council on the following agenda items:

1. Progress with recommendations on improvements to the annual report modules and 1996 report modules from American Samoa, Guam, Hawaii and the Northern Mariana Islands;
2. Review Cross Seamount interaction issue;
3. Progress report on bycatch issues including albatross, turtles, and sharks;
4. Determination of Total Allowable Level of Foreign fishing;
5. Magnuson-Stevens Act requirements including fishery management plan definitions of bycatch, fishing sectors, essential fish habitat, fishing communities and overfishing; and 6. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to meeting date.

Dated: April 23, 1997.

Gary C. Matlock, Ph.D.,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-10956 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042197E]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Precious Coral Plan Team.

DATES: The meeting will be held on May 13, 1997, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at NMFS Honolulu Laboratory, 2570 Dole Street, Room 120, Honolulu, HI; telephone: (808) 943-1221.

Council address: Western Pacific Fishery Management Council, 1164

Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522-8220.

SUPPLEMENTARY INFORMATION: The plan team will discuss and may make recommendations to the Council on the following agenda items:

1. Application to harvest precious corals including the industry proposal and the status of Federal and state permits;
2. Consider amendments to the fishery management plan to include a frame work process and the addition of black coral; and
3. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to meeting date.

Dated: April 23, 1997.

Gary C. Matlock, Ph.D.,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-10957 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042197C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Bottomfish and Seamount Groundfish Plan Team.

DATES: The meeting will be held on May 14-15, 1997, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Ilikai Hotel, Yacht Harbor Tower, Room 262, Ala Moana Blvd., Honolulu, HI; telephone: (808) 949-3811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: The plan team will discuss and may make recommendations to the Council on the following agenda items:

1. Progress with recommendations on improvements to the annual report modules and 1996 report modules from American Samoa, Guam, Hawaii and the Northern Mariana Islands;
2. Limited entry alternatives for the Mau Zone and moratorium on new entry for the Mau Zone in the Northwestern Hawaiian Islands, including report from task force;
3. Status of Department of Land and Natural Resources progress with management plan for overfished Main Hawaiian Island (MHI) onaga and ehu;
4. Draft management plan for MHI onaga and ehu stocks in Federal waters;
5. Magnuson-Stevens Act requirements including fishery management plan definitions and provisions;
6. Pending expiration of seamount ground fish moratorium; and
7. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to meeting date.

Dated: April 23, 1997.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-11034 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 040297C]

Marine Mammals; Scientific Research Permit No. 1032 (P624)

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and U.S. Fish and Wildlife Service.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Michael J. Moore, Research Specialist, MS 33 Biology Department, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, has been issued a

permit to take marine mammal specimens for the purpose of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (SEE SUPPLEMENTARY INFORMATION).

SUPPLEMENTARY INFORMATION: On December 26, 1996, notice was published in the **Federal Register** (61 FR 68050) that a request for a scientific research permit to take marine mammals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA, 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222.25), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act.

Addresses: Documents may be reviewed in the following locations: Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203 (703/358-2104);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298 (508/281-9250); and Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702-2432 (813/570-5301).

Dated: April 18, 1997

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: April 18, 1997

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 97-10783 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042197H]

Marine Mammals; Permit No. 968 (P557D)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 968 submitted by Scripps Institution of Oceanography, Acoustic Thermometry of Ocean Climate Project, Institute for Geophysics and Planetary Physics, 9500 Gilman Drive, La Jolla, California 92093-02252, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4001).

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This amendment extends the permit to allow the completion of the entire 24 month Marine Mammal Research Program (MMRP), to compensate for delays associated with the start of the project and the recent cable break. The permit is valid through August 31, 1998, or until the completion of the originally planned 24 month research period, whichever comes first.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the

endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 18, 1997.

Ann D. Terbush Chief,

Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-10998 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of a Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Guatemala

April 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

On the request of the Government of Guatemala, the U.S. Government agreed to increase the 1997 Guaranteed Access Level for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58038, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but

are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on May 1, 1997, you are directed to increase the Guaranteed Access Level for Categories 347/348 to 2,000,000 dozen¹.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97-11049 Filed 4-28-97; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Notice and Request for Comments

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through September 30, 1997. DoD proposes that OMB extend its approval for use through September 30, 2000.

DATES: Consideration will be given to all comments received by June 30, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent to: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD (AT&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax (703) 602-0350. Please cite OMB Control Number 0704-0369 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, at (703) 602-0131. A copy of this information collection requirement is available electronically via the Internet at: <http://www.dtic.mil/dfars/>.

Paper copies may be obtained from Mr. Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and associated DFARS clauses and provisions in DFARS Subpart 252.2; no form is used for this information collection; OMB Number 0704-0369.

Needs and Uses: This requirement provides for the collection of necessary information from contractors and subcontractors regarding restrictions on the Government's right to use or disclose technical data and computer software. The information is used to identify and protect such data or computer software from unauthorized release or disclosure; to facilitate public use of technical data and computer software developed at Government expense; and to enable contracting officers to determine whether the Government has otherwise paid to obtain rights in the technical data or computer software.

Affected Public: Businesses or other for-profit, not-for-profit institutions, and small businesses or organizations.

Annual Burden Hours: 5,566,939.

Number of Responses: 10,560,868.

Responses per Respondent: 1.

Average Burden per Response: 32 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10, U.S.C. Chapter 137 requires that the Department of Defense recognize and protect contractor rights in technical data and computer software developed with private funds. The clauses at DFARS 252.227-7013, 252.227-7014, 252.227-7017, and 252.227-7018 require identification and marking of such data or software to specify the Government's rights therein and to prevent its unauthorized disclosure or release.

DFARS 252.227-7013 and 252.227-7018 require that, prior to receiving Government-furnished technical data in which the Government does not have unlimited rights, the recipient of such data execute a "Use and Disclosure Agreement." DFARS 252.227-7014 contains a similar requirement regarding release of computer software.

DFARS 252.227-7036 requires contractors to furnish written assurance, at the time technical data is delivered or made available under the terms of a contract, that the technical data is complete and accurate and satisfies the applicable contract requirement.

DFARS 252.227-7019 and 252.227-7037 require contractors and subcontractors to maintain adequate records to justify any asserted restrictions on the Government's rights to use or release technical data or computer software, and to be prepared to furnish a justification of the asserted restrictions upon Government challenge thereof.

DFARS 252.227-7025 requires contractors and subcontractors at any tier to obtain data a "Use and Disclosure Agreement" from any subcontractor or supplier prior to releasing or disclosing to such persons any Government-furnished information marked with a restrictive legend.

DFARS 252.227-7028 requires offerors to identify any technical data or computer software that the offeror has previously delivered, or is obligated to deliver, under any Federal agency contract.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 97-11038 Filed 4-28-97; 8:45 am]

BILLING CODE 5000-04-M

¹ The limit has not been adjusted to account for any imports exported after December 31, 1996.

DEPARTMENT OF DEFENSE**Office of the Secretary****Submission for OMB Review;
Comment Request****ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Associated Forms: Request for Armed Forces Participation in Public Events (Non-Aviation) and Request for Military Aerial Support, DD Forms 2535, 2536, OMB Number 0704-0290.

Type of Request: Revision.

Number of Respondents: 43,000.

Responses per Respondent: 1.

Annual Responses: 43,000.

Average Burden per Response: 8 minutes.

Annual Burden House: 5,500.

Needs and Uses: Department of Defense installation and command public affairs offices will use the information collected from event sponsors in the civilian domain to evaluate public affairs requests for military support. Respondents are representatives of non-Federal governments, community groups, non-profit organizations, and civic associations. The community relations staff will compare the information against DoD standards to determine if Armed Forces participation is authorized and then determine if assets are available. The information is necessary for the tasked unit to arrive at the proper location at the requested time with the requested support.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-For-Profit Institutions; State, Local, or, Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: April 23, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-10991 Filed 4-28-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Department of the Air Force**

Acceptance of Group Application Under P.L. 95-202 and DoDD 1000.20; "American Merchant Marine Mariners Who Were in Active Oceangoing Service During the Period of August 15, 1945 to December 31, 1946"

Under the provisions of Section 401, Public Law 95-202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application for reconsideration on behalf of the group known as: "American Merchant Marine Mariners Who Were in Active Oceangoing Service during the Period of August 15, 1945, to December 31, 1946." Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, Secretary of the Air Force Personnel Council, 1535 Command Dr., EE-Wing, 3rd Floor., Andrews Air Force Base, MD 20762-7002. Copies of documents or other materials submitted cannot be returned. For further information, contact Mr. Johnson at the same address.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97-11046 Filed 4-28-97; 8:45 am]

BILLING CODE 3910-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Board.

Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site;

Date and Time: Tuesday, June 17, 1997, 7:00 p.m.-9:00 p.m.;

Address: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502 (303) 248-7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Update on Millsite remediation; reports from subcommittees on local training and hiring, health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 am and 4 pm, Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248-7727.

Issued at Washington, DC on April 24, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97-11050 Filed 4-28-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, May 10, 1997—8:30 a.m.–12:30 p.m. (public comment session—10:00 p.m.–10:15 p.m.)

ADDRESSES: The Alpha Building, 10967 Hamilton Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648-6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

8:30 a.m.—Call to Order

8:30–8:45—Chair's Remarks and New Business

8:45–9:00—Update on Silos

9:00–10:15—Budget and Schedule Issues

10:15–10:30—Break

10:30–12:30—Tour of Site Remediation Areas

12:30–1:30—Working Lunch to Review Site Activities

1:30 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, May 10, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S.

Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice being published less than 15 days before the date due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to John S.

Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648-6478.

Issued at Washington, DC on April 23, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97-11051 Filed 4-28-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board, Rocky Flats**

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, May 1, 1997, 6:00 p.m.–9:30 p.m.

ADDRESSES: Westminster City Hall (Lower-level Multi-purpose Room), 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420-7855, fax: (303) 420-7579.

SUPPLEMENTARY INFORMATION:**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

(1) The Board will have a presentation of preliminary findings from a technical contractor it hired to perform a critical analysis of the environmental monitoring program at and around Rocky Flats.

(2) Board members will consider approval of recommendations on several

issues, including radioactive waste transportation, the National Conversion Pilot Project, and an assessment of the new performance-based management contract in use at the site.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420-7855. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on April 23, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97-11052 Filed 4-28-97; 8:45 am]

BILLING CODE 6450-01-P-M

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board, Savannah River**

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES:

Monday, May 12, 1997: 2:00 p.m.–4:00 p.m. (Forum Planning/Outreach)
4:30 p.m. (Executive Committee Meeting)
6:30 p.m.–7:00 p.m. (Public Comment Session)
7:00 p.m.–9:00 p.m. (Subcommittee Meetings)
Tuesday, May 13, 1997: 8:30 a.m.–4:00 p.m.

ADDRESSES: Monday, May 12, 1997: Marriott Riverfront Hotel, 100 General McIntosh Boulevard, Savannah, Georgia.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, (803) 725-5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, May 12, 1997

2:00 p.m. Forum planning/outreach
4:30 p.m. Executive committee meeting
6:30 p.m. Public comment session (5-minute rule)
7:00 p.m. Subcommittee meetings

Tuesday, May 13, 1997

8:30 a.m. Approval of minutes, agency updates (~ 15 minutes); Public comment session (5-minute rule) (~ 30 minutes); Environmental restoration and waste management subcommittee report (~ 1 3/4 hours); Nuclear materials management subcommittee report (~ 1 hour)
12:00 p.m. Lunch
1:00 p.m. Solid Waste Program Overview (~ 30 minutes); Risk management & future use subcommittee report (~ 30 minutes); Budget subcommittee report (~ 15 minutes); Administrative subcommittee report (~ 15 minutes)—Includes potential by-laws ammendment; Spent fuel forum update (~ 10 minutes);

Outreach subcommittee report (~ 10 minutes); National Dialogue/SSAB Chair Meeting discussion (~ 10 minutes); November meeting change discussion

4:00 p.m. Adjourn

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, May 12, 1997.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the meeting date due to programmatic issues that had to be resolved.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 725-5374.

Issued at Washington, DC on April 24, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97-11053 Filed 4-28-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy, National Coal Council Coal Policy Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Thursday, May 15, 1997 at 1:30 pm.

Place: Old Town Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact: Margie D. Biggerstaff, U.S.

Department of Energy, Office of Fossil Energy (FE-5), Washington, DC 20585, Telephone: 202/586-3867.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: General discussion on major issues and potential areas for study.

Tentative Agenda

—Opening remarks by Steven Leer, Chairman of the Coal Policy Committee.

—Approve agenda.

—Remarks by Department of Energy representative (The Honorable Patricia Fry Godley, Assistant Secretary for Fossil Energy (invited)).

—General discussion of major issues and potential areas for study.

—Discussion of any other business to be properly brought before the Committee.

—Public comment—10-minute rule.

—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 am and 4 pm, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on April 24, 1997.

Rachel M. Samuel,

Acting Deputy Committee, Management Advisory Officer.

[FR Doc. 97-11054 Filed 4-28-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-343-000]

Alabama-Tennessee Natural Gas Company; Notice of Application

April 23, 1997.

Take notice that on April 15, 1997, Alabama-Tennessee Natural Gas

Company (A-T), 3230 Second Street, Muscle Shoals, Alabama 35661, filed an application in Docket No. CP97-343-000 for a certificate of public convenience and necessity, pursuant to Section 7 of the Natural Gas Act, to construct and operate compression facilities to permit A-T to transport up to 8,310 Mcf of natural gas per day on a firm basis for Huntsville Utilities Gas System, City of Huntsville, Alabama (Huntsville), City of Decatur, Alabama (Decatur) and Marshall County Gas District (Marshall County), and for pregranted abandonment of those facilities upon expiration of the underlying contracts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

A-T proposes to increase transportation volumes for Huntsville by 2,442 Mcf per day and for Decatur by 1,868 Mcf per day and initiate a firm transportation service for Marshall County for 4,000 Mcf per day. A-T proposes to provide the services on November 1, 1997, for a term of five years or such longer periods as may be requested by the shippers and determined to be appropriate and lawful under applicable federal and state laws.

A-T indicates that, to provide the proposed services, it would construct and operate additional compressors at its Sheffield and Decatur Compressor Stations. A-T estimates a related construction cost of \$1,806,748 for the two compressors and related facilities such as suction and discharge piping, blow down systems, fuel gas systems and buildings, which would be financed with funds on hand, funds generated internally, and borrowings under revolving credit agreements. A-T proposes to charge Part 284 rates.

A-T states that its proposed services and facilities were identified as the environmentally preferable alternative to the North Alabama Pipeline Project proposed by Southern Natural Gas Company in the Draft Environmental Statement recently issued in Docket No. CP-96-153-000.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 5, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in

determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for A-T to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10939 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97-333-000 & RP97-126-000 (Not Consolidated)]

Connecticut Natural Gas Company, Yankee Gas Services Company, and The Southern Connecticut Gas Company V. Iroquois Gas Transmission System, L.P. and Iroquois Gas Transmission System, L.P.; Notice of Complaint and Motion To Consolidate

April 23, 1997.

Take notice that on April 16, 1997, Connecticut Natural Gas Company, Yankee Gas Services Company, and The Southern Connecticut Gas Company (Connecticut Customers) tendered for filing a complaint against Iroquois Gas Transmission System, L.P. (Iroquois), and a motion to consolidate the complaint with Iroquois pending rate proceeding in Docket No. RP97-126-000.

Connecticut Customers argue that Iroquois improperly retained for itself the revenues from five transportation contracts which should have been shared with firm customers through Iroquois' revenue sharing mechanism, and the Connecticut Customers seek relief in the form of an order directing Iroquois to share the revenues.

Connecticut Customers also argue that Iroquois improperly excluded five transportation contracts which produced a total of \$2.8 million in revenues from the revenue sharing mechanism set forth in Section 4.2(g) of its FERC Gas Tariff; under the 90/10/Interruptible Transportation Service (ITS)/Short-Term Firm Transportation Service (STF) sharing mechanism, \$2.5 million of this amount should have been credited to Rate Schedule (RTS) customers. Connecticut Customers states that the contracts fall into two basic categories: (1) Backhaul contracts that were characterized as "firm" but that were used exclusively as "secondary point firm" forward haul contracts and should have been classified as ITS; and (2) STF contract that was "amended" in order to avoid the RP94-72 settlement definition of "SFT".

Connecticut Customers states that copies of the filing have been served upon the persons named on the restricted service list compiled in Docket No. RP97-126-000.

Any person desiring to be heard or to protest said complaint and motion should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before May 16, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before May 16, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10931 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP97-344-000]

KN Interstate Gas Transmission Company; Notice of Request Under Blanket Authorization

April 23, 1997.

Take notice that on April 16, 1997, KN Interstate Gas Transmission Company (KN Interstate), 370 Van Gordon Street, P.O. Box 281304, Lakewood, Colorado 80228-8304, filed in Docket No. CP97-344-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate eighteen new delivery taps and appurtenant facilities located on their main transmission system in Colorado, Kansas, and Nebraska, under KN Interstate's blanket certificate issued in Docket No. CP83-140-000 and CP83-140-001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

KN Interstate proposes to install and operate eighteen new delivery taps located in Logan and Yuma Counties, Colorado; Scott County, Kansas; and Adams, Boone, Cheyenne, Clay, Dawes, Franklin, Gosper, Hall, Holt, Howard, Kearney, and Phelps, Counties, Nebraska. KN Interstate declares seventeen of these taps will be added as delivery points under an existing transportation agreement between KN Interstate and KN Energy, Inc. (KN) and one of these taps will be added as a delivery point under an existing transportation agreement between KN Interstate and Public Service Company of Colorado (Public Service).

KN Interstate asserts these proposed delivery points will be used by KN and Public Service to facilitate the delivery of natural gas to direct retail customers. KN Interstate states the estimated total cost of the eighteen proposed delivery points to be \$125,720.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to

be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-10938 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP97-352-000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

April 23, 1997.

Take notice that on April 17, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP97-352-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a dual 6-inch meter station at an existing 12-inch tap to provide natural gas service to Mobil Oil Corporation's Chalmette Refinery (Mobil), under Koch Gateway's blanket certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to install the new tap on its existing lateral line, designated as TPL 287, in St. Bernard Parish, Louisiana. The installation costs are estimated at \$135,000. Mobil estimates its peak day and average day volumes to be 18,648 MMBtu and 12,432 MMBtu, respectively. All construction activities will be within Koch Gateway's existing right-of-way and fenced-in station yard. Mobil will construct approximately 2,100 feet of 4-inch, 40 feet of 8-inch and 250 feet of 10-inch pipeline to connect the proposed meter tubes to its facility.

Koch Gateway states that the new installation of facilities is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other existing customers. Koch Gateway also states that this proposed service will not have an effect on its peak day and annual

deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-10936 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP97-201-004]

National Fuel Gas Supply Corporation; Notice of Proposed Changes In FERC Gas Tariff

April 23, 1997.

Take notice that on April 21, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to its filing, to be effective April 1, 1997.

National Fuel states that the purpose of this filing is to correct certain duplication and gaps in its tariff resulting from its Order No. 587—GISB filing and its companion Section 4 filing in this proceeding.

National Fuel also proposes to withdraw the following effective tariff sheets:

First Revised Sheet No. 132
Original Sheet No. 132A (issued February 28, 1997)
First Rev. Second Revised Sheet No. 133
First Rev. Substitute Second Revised Sheet No. 133A

National Fuel states that the withdrawal of these sheets has no effect on its proposed changes submitted in Docket No. RP96-201.

National states that it is serving copies of the filing with its firm customers and

interested state commissions. Copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10933 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-320-000]

Joint Parties v. Northwest Pipeline Corporation; Notice of Complaint

April 23, 1997.

On March 20, 1997, in Docket No. RP97-294-000, Northwest Pipeline Corporation (Northwest) tendered for filing a tariff sheet proposing a two-year extension of the operational flow order provisions in Section 14.15 of the General Terms and Conditions of Northwest's tariff. On April 1, 1997, Northwest Natural Gas Company, Washington Natural Gas Company, and Cascade Natural Gas Corporation filed a joint protest (Joint Parties).

On April 16, 1997, the Commission issued an order in Docket No. RP97-294-000,¹ finding, among other things, that Joint Parties' protest was tantamount to a complaint. Accordingly, the Joint Parties' protest is being redocketed as a complaint so that the allegations surrounding Northwest's past actions can be fully examined.

The complaint raises a number of questions including: (1) What is Northwest's design day capacity for deliveries to the south end of its system; (2) what was the cause(s) of the operational problems lasting from March 1996 thru September 1996; (3) should Northwest utilize its general tariff OFO Mechanism to provide additional short-term services; if yes,

then under what conditions; (4) was Northwest remiss in its analysis assessing its ability to provide the 144,000 Dth/d of short-term firm services; (5) were Pacific Northwest customers harmed by Northwest's actions, and, if so, then how should that harm be addressed by the Commission; and (6) should the Commission alter the conditions under which Northwest can issue a general tariff OFO?

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before May 22, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10932 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93-151-025]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 23, 1997.

Take notice that on April 22, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following sheets to become effective May 1, 1997:

Substitute Fourteenth Revised Sheet No. 20
Seventeenth Revised Sheet No. 21A
Twenty-Second Revised Sheet No. 22
Seventeenth Revised Sheet No. 22A
Substitute Thirteenth Revised Sheet No. 23
Substitute Eighth Revised Sheet No. 23B
Nineteenth Revised Sheet No. 24
Fourteenth Revised Sheet No. 25
Substitute Fourteenth Revised Sheet No. 26B
Third Revised Sheet No. 209A
Second Revised Sheet No. 209B
Second Substitute First Revised Sheet No. 323
Substitute Second Revised Sheet No. 324
Original Sheet No. 324A

Third Revised Sheet No. 393
Substitute Original Sheet No. 412

Tennessee states that the purpose of this filing is to implement surcharges, cost components, and changes to its tariff consistent with the terms and conditions of the Commission-approved February 28, 1997 Stipulation and Agreement (Stipulation) between Tennessee and its customers. The Stipulation represents a final resolution of restructuring costs associated with the termination of Tennessee's former bundled merchant service. In the event that the Commission accepts this filing, Tennessee requests that its GSR filing made on March 31, 1997, in Docket No. RP97-303, be deemed withdrawn. Alternatively, in the event that Tennessee's request is not granted, Tennessee requests that the Commission proceed with its evaluation of Tennessee's March 31, 1997 GSR filing in Docket No. RP97-303. Following such Commission action on Docket No. RP97-303, Tennessee requests that the above-referenced tariff sheets be accepted for implementation effective no later than June 1, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10983 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97-20-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 23, 1997.

Take notice that on April 18, 1997, Transcontinental Gas Pipe Line

¹ 79 FERC ¶61,029 (1997).

Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to become effective May 18, 1997.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of Section 19 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff. Specifically, such tariff sheets have been revised to include changes associated with (1) completed incremental capacity expansions, (2) the conversion from Section 7(c) to Part 284 service for certain shippers, and (3) miscellaneous corrections or name changes.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10935 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-349-000]

Transwestern Pipeline Company; Notice of Request Under Blanket Authorization

April 23, 1997.

Take notice that on April 17, 1997, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP97-349-000, a request pursuant to Sections 157.205, and 157.212 of the Commission's

Regulations under the Natural Gas Act (N.A.) (18 CFR 157.205, and 157.212) for authorization to operate the existing facilities in Hansford County, Texas, as a delivery point to accommodate interruptible natural gas deliveries for shippers(s) to West Texas Gas, Inc. (WTG) under Transwestern's blanket certificate issued in Docket No. CP82-435-000 pursuant to Section 7 of the N.A., all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern states that service will be provided for shipper(s) on behalf of WTG pursuant to currently effective throughput service agreement(s). Transwestern asserts that WTG has requested the proposed delivery point to serve commercial and residential customers in Hansford County, Texas.

Transwestern asserts that the proposed volumes to be delivered for WTG at the Hansford County Delivery are 1,000 MMBtu on a peak day and 365,000 MMBtu on an annual basis. Since Transwestern is proposing to utilize existing facilities, no construction activity or associated costs is required.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest.

If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10937 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-1417-000, et al.]

Transcanada Energy Ltd., et al.; Electric Rate and Corporate Regulation Filings

April 23, 1997.

Take notice that the following filings have been made with the Commission:

1. Transcanada Energy Ltd.

[Docket No. ER97-1417-000]

Take notice that on March 17, 1997, Transcanada Energy Ltd. tendered for filing an amendment in the above-referenced docket.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER97-1824-000]

Take notice that on April 11, 1997, New York State Electric & Gas Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. ER97-2339-000]

Take notice that on March 31, 1997, Central Illinois Public Service Company (CIPS) submitted a service agreement, dated March 24, 1997, establishing Wisconsin Public Power Inc. as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of March 24, 1997 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of the filing were served upon Wisconsin Public Power Inc. and the Illinois Commerce Commission.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Company

[Docket No. ER97-2346-000]

Take notice that on March 31, 1997, Wisconsin Power and Light Company (WP&L) tendered for filing Form Of Service Agreements for Firm and Non-firm Point-to-Point Transmission Service establishing Southern Energy Trading and Marketing, Inc. as a point-

to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of March 6, 1997, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER97-2378-000]

Take notice that on April 1, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER97-2386-000]

Take notice that on April 2, 1997, Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Non-Firm Point to Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: Atlantic City Electric Company. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER97-2389-000]

Take notice that on April 2, 1997, New York State Electric & Gas Corporation (NYSEG) filed a Service Agreement between NYSEG and Central Maine Power Corporation (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on January 29, 1997 with revised sheets effective on February 7,

1997, in Docket No. OA96-195-000 and ER96-2438-000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of April 2, 1997 for the Central Maine Power Corporation Service Agreement. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER97-2461-000]

Take notice that on April 8, 1997, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated March 3, 1997, between KCPL and Union Electric Company (UE). KCPL proposes an effective date of March 10, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and Citizens.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96-4-000.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Fitchburg Gas and Electric Light Company

[Docket No. ER97-2463-000]

Take notice that on April 8, 1997, Fitchburg Gas and Electric Light Company (FG&E) tendered for filing pursuant to Rules 205 and 207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule to be effective June 1, 1997.

In transactions where FG&E will sell electric energy and/or power at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. FG&E asserts that it may engage in electric power and energy transactions as a marketer and a broker.

FG&E indicates it has served a copy of this filing on the Massachusetts Department of Public Utilities.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Company

[Docket No. ER97-2465-000]

Take notice that on April 8, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated March 27, 1997 with New York Power Authority (NYPA) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds NYPA as an eligible customer under the Tariff.

PP&L requests an effective date of April 8, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NYPA and to the Pennsylvania Public Utility Commission.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER97-2507-000]

Take notice that on April 11, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Ohio Edison Company. This Transmission Service Agreement specifies that Ohio Edison Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96-194-000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Ohio Edison Company to enter into separately scheduled transactions under which NMPC will provide transmission service for Ohio Edison Company as the parties may mutually agree.

NMPC requests an effective date of April 3, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Ohio Edison Company.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97-2508-000]

Take notice that on April 11, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Southern Company Services, Inc. under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Tucson Electric Power Company

[Docket No. ER97-2509-000]

Take notice that on April 11, 1997, Tucson Electric Power Company (TEP), tendered for filing two (2) service agreements for non-firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96-140-000 with the following entities:

1. Electric Clearinghouse, Inc.
2. Illinova Energy Partners.

TEP requests waiver of notice to permit the service agreements to become effective as of March 18, 1997. A copy of this filing has been served upon each of the parties to the service agreements.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER97-2510-000]

Take notice that on April 11, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Service Agreement between AYP Energy, Inc. and Virginia Power, dated January 22, 1997, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreement Virginia Power agrees to provide services to AYP Energy, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff. In that filing, Virginia Power also submitted a refund report for revenues associated with transactions occurring before the effective date.

Copies of the filing were served upon AYP Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER97-2511-000]

Take notice that on April 11, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with Atlantic City Electric Company and Ohio Edison Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under

the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Ohio Public Utilities Commission.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER97-2512-000]

Take notice that on April 11, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and Plum Street Energy Marketing, Inc. under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to Equitable Power Services Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: May 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10982 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11214-001 Illinois]

Southwestern Electric Cooperative, Inc.; Notice of Availability of Environmental Assessment

April 23, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Carlyle Project to be located on the Kaskaskia River in Clinton County, near the City of Carlyle, Illinois, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97-10934 Filed 4-28-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of January 27 Through January 31, 1997

During the Week of January 27 through January 31, 1997, the appeals, and applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of

receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and

Appeals, Department of Energy, Washington, DC 20585-0107.

Dated: April 22, 1997.
George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 27 Through January 31, 1997]

Date	Name and location of applicant	Case No.	Type of submission
01/27/97	Lois B. Vaughn, Washington, D.C.	VFA-0264	Appeal of an Information Request Denial. If granted: The May 3, 1996 Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Lois B. Vaughn would receive access to certain DOE information.
01/28/97	Martha J. McNeely, Gilroy, California	VFA-0265	Appeal of an Information Request Denial. If granted: The December 26, 1996 Freedom of Information Request Denial issued by Richland Operations Office would be rescinded, and Martha J. McNeely would receive access to certain DOE information.
01/31/97	Arthur F. Murfin, Golden, Colorado	VWA-0016	Request for Hearing under DOE Contractor Employee Protection Program. If granted: A hearing under 10 CFR Part 708 would be held on the complaint of Arthur F. Murfin that reprisals were taken against him by management of EG&G Rocky Flats, Inc. as a consequence of his having disclosed safety/health concerns to DOE.
01/31/97	Personnel Security Hearing	VSO-0132	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by a Contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
01/31/97	Personnel Security Hearing	VSO-0133	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by a Contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.

[FR Doc. 97-10996 Filed 4-28-97; 8:45 am]
 BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of March 24 through March 28, 1997

During the Week of March 24 through March 28, 1997, the appeals,

applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and

Appeals, Department of Energy, Washington, D.C. 20585-0107.

Dated: April 22, 1997.
George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 24 Through March 28, 1997]

Date	Name and location of applicant	Case No.	Type of submission
3/24/97	Information Focus on Energy, Inc., Gaithersburg, MD.	VFA-0280	Appeal of an information request denial. If granted: The February 18, 1997 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Information Focus on Energy, Inc. would receive access to certain DOE information.
3/24/97	Information Focus on Energy, Inc., Gaithersburg, MD.	VFA-0281	Appeal of an information request denial. If granted: The February 28, 1997 Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Information Focus on Energy, Inc. would receive access to certain DOE information.
3/24/97	Personnel Security Hearing	VSO-0148	Request for hearing under 10 CFR part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of March 24 Through March 28, 1997]

Date	Name and location of applicant	Case No.	Type of submission
3/26/97	National Steel Corp., Pittsburgh, PA	RR272-287	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The March 22, 1991 Decision and Order, Case No. RF272-77439, issued to National Steel Corp. would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund Proceeding.
3/26/97	Research Information Services, Inc., Washington, DC.	VFA-0283	Appeal of an information request denial. If granted: The November 27, 1996 Freedom of Information Request Denial issued by the Office of Hearings and Appeals be rescinded, and Research Information Services Inc. would receive access to certain DOE information.
3/26/97	Richard J. Levernier, Germantown, MD	VFA-0282	Appeal of an information request denial. If granted: The February 28, 1997 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Richard J. Levernier would receive access to certain DOE information.
3/27/97	Centra Sota Cooperative, Hardin, KY	RR272-288	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The November 20, 1996 Dismissal, Case No. RG272-698, issued to Centra Sota Cooperative would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
3/24/97	Personnel Security Hearing	VSO-0149	Request for hearing under 10 CFR part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
3/24/97	Arlington Salvage & Wrecker Co., Jacksonville, FL.	RR272-289	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The March 13, 1997 Dismissal of Case No. RG272-914 would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.

[FR Doc. 97-11022 Filed 4-28-97; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5818-7]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on May 6th and 7th, 1997. The meeting will take place at the Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, Virginia from 9:00 a.m. to 5:00 p.m. on Tuesday, May 6th and Wednesday, May 7th. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education

and Public Affairs (OCEPA) and the Environmental Education Division (EED) on its implementation of the Act. Members of the Public are invited to attend and to submit written comments to EPA following the meeting.

EPA regrets that it is unable to publish this notice 15 days prior to the meeting of the National Environmental Education Advisory Council held on May 6th and 7th, due in part to scheduling conflicts. The Agency decided that it is in the public interest to obtain the advice of the Council on environmental education matters at this meeting, even if there was not sufficient time for the customary 15 day public notice.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Environmental Education Division (1707), Office of Communications, Education and Public Affairs, U.S. EPA, 401 M Street, SW, Washington, DC 20460 or call (202) 260-4129.

Dated: April 23, 1997.

Ginger Keho,*Designated Federal Official, National Environmental Education Advisory Council.*

[FR Doc. 97-11018 Filed 4-28-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1176-DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA-1176-DR), dated April 14, 1997, and related determinations.

EFFECTIVE DATE: April 16, 1997

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery

Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 14, 1997:

The counties of Craighead and Poinsett for Individual Assistance and Hazard Mitigation.

The counties of Columbia, Jefferson and Lonoke for Individual Assistance (already designated for Public Assistance and Hazard Mitigation.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97-11004 Filed 4-28-97; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1175-DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA-1175-DR), dated April 8, 1997, and related determinations.

EFFECTIVE DATE: April 16, 1997

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 8, 1997:

St. Louis County for Individual Assistance, Categories A and B under the Public Assistance program and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97-11003 Filed 4-28-97; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203-011570

Title: Hanjin/DSR-Senator Cooperative Management Agreement

Parties:

Hanjin Shipping Co., Ltd.
DSR-Senator Lines GMBH

Synopsis: The proposed Agreement would permit the parties to charter space aboard one another's vessels; to rationalize and jointly advertise their sailings; to discuss and agree upon the leasing, interchange, and pooling of equipment; to share terminals and use common agents; to share operating and administrative expenses; to enter into joint service contracts; and to agree upon rates, charges, and conditions of service in all trade areas served by the parties. Adherence to any agreement reached by the parties is voluntary. The parties have requested a shortened review period.

Agreement No.: 217-011571

Title: Iceland Steamship/Samskip Slot Charter Agreement

Parties:

Iceland Steamship Company Ltd.
("ISC")
Samskip hf. ("Samskip")

Synopsis: The proposed Agreement would permit Samskip to charter space aboard ISC's vessels in the trade between North Atlantic ports of the United States and Reykjavik, Iceland. The parties have requested a shortened review period.

Agreement No.: 202-011572

Title: Colombia Independent Carrier Agreement

Parties:

Frontier Liner Services
Seaboard Marine Ltd.

Synopsis: The proposed Agreement would permit the parties to discuss and agree upon rates, charges, terms and conditions of service in the trade between United States Atlantic and Gulf ports, including Puerto Rico and the U.S. Virgin Islands, and inland points via such ports, and ports and points on the North Coast of

Colombia. The parties may also enter into space chartering and service rationalization arrangements with members of the Colombia Discussion Agreement (FMC Agreement No. 203-011367).

By Order of the Federal Maritime Commission.

Dated: April 23, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97-10941 Filed 4-28-97; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. **MASSBANK Corp.**, Reading, Massachusetts; to acquire up to 19.9 percent of the voting shares of Glendale Co-operative Bank, Everett, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III

Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *South Branch Valley Bancorp, Inc.*, Moorefield, West Virginia; to acquire 40.1 percent of the voting shares of Capital State Bank, Inc., Charleston, West Virginia.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Peoples Financial Services, Inc.*, Hamtramck, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Hamtramck, Michigan.

Board of Governors of the Federal Reserve System, April 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-11043 Filed 4-28-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice to Engage in Certain Nonbanking Activities

Commerzbank AG, Frankfurt am Main, Germany (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8), and § 225.24 of the Board's Regulation Y (12 CFR 225.24), to acquire through its wholly owned subsidiary, CAM Acquisition, LLC, Wilmington, Delaware, substantially all the assets of Montgomery Asset Management, L.P. (Partnership), including a membership interest in Montgomery Services, LLC, a subsidiary of Partnership, both in San Francisco, California, and thereby engage in the following nonbanking activities: (1) providing securities brokerage services and acting as agent for the private placement of securities, pursuant to 12 CFR 225.28(b)(7)(i) and (iii) of the Board's Regulation Y; (2) providing financial and investment advisory services, pursuant to 12 CFR 225.28(b)(6) of the Board's Regulation Y; and (3) providing administrative services to open-end investment companies (mutual funds), *see Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993); *Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996). Notificant would engage in these activities in accordance with most of the limitations and conditions established by the Board by regulation or order with certain exceptions relating to the proposed provision of advisory and administrative services to mutual funds, as set forth in the notice. These activities will be conducted worldwide.

Unless otherwise noted, comments regarding this application must be received at the Federal Reserve Bank of New York or the offices of the Board of Governors not later than May 14, 1997.

Board of Governors of the Federal Reserve System, April 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-11042 Filed 4-28-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 13, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Concord EFS, Inc.*, Memphis, Tennessee; to engage *de novo* through its subsidiary, EFS Federal Savings Bank Oakland, Tennessee (in organization), and thereby indirectly acquire First Federal Bank, FSB, Memphis, Tennessee, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-10923 Filed 4-28-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Summit Bancorp*, Princeton, New Jersey; to acquire Collective Bancorp, Inc., Egg Harbor, New Jersey, and thereby indirectly acquire Collective Bank, Egg Harbor, New Jersey, and engage in operating a federal savings bank, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y, and alternatively to acquire, under certain circumstances, up to 19.9 percent of the voting shares of Collective Bancorp, Inc. Applicant also has applied to acquire Collective Financial Services, Inc., and thereby engage in securities brokerage and insurance agency activities in towns of less than 5,000, pursuant to §§ 222.28(b)(7)(1) and (b)(11)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-11044 Filed 4-28-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, May 5, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-11235 Filed 4-25-97; 3:03 pm]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. D09267]

Metagenics, Inc.; Jeffrey Katke; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent

agreement—that would settle these allegations.

DATES: Comments must be received on or before June 30, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Lesley Ann Fair, Federal Trade Commission, S-4002, 6th St. and Pa. Ave., NW., Washington, DC 20580. (202) 326-3081.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 USC 46, and Section 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for April 22, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Metagenics, Inc. and its officer and director, Jeffrey Katke.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On August 16, 1994, the Commission issued a complaint against respondents, alleging that they made deceptive claims in advertisements for Bone Builder, a calcium supplement. After an administrative trial, the Administrative Law Judge issued an Initial Decision on October 22, 1996, from which both complaint counsel and respondents filed notices of appeal. On January 7, 1997, the Commission granted a Joint Motion to Withdraw from Adjudication to consider the proposed consent agreement in this case.

The Commission has issued an amended complaint, clarifying some of the allegations in the August 16, 1994, complaint. The amended complaint alleges that respondents represented without substantiation that post-menopausal women who have already lost bone and who use Bone Builder will experience no additional bone loss and will achieve a growth of new bone greater than the amount of bone lost; that users of Bone Builder will not experience bone loss or osteoporosis; that Bone Builder restores bone strength; that Bone Builder reduces or eliminates pain associated with bone ailments; and that Bone Builder is more bioavailable, more absorbable, or more effectively utilized by the body than other forms of calcium or is more effective than other forms of calcium in the prevention or treatment of bone ailments. The amended complaint also states that respondents relied upon a reasonable basis to substantiate that adequate calcium intake has many benefits and is one of the essential factors in the body's ongoing process of removal of old bone and replacement by new bone; in conjunction with other factors, adequate calcium intake can play a significant role in reducing the rate of bone loss or bone thinning and in protecting bone strength; and individuals who do not consume adequate calcium are at greater risk of experiencing bone fractures than those who do.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future. In advertising or selling any food, drug, or supplement, Part I of the order requires respondents to rely on competent and reliable scientific evidence to support any claim that post-menopausal women who have lost bone and who use the product will experience no additional bone loss or will achieve a growth of new bone greater than the amount of bone loss or that users of the product will not experience bone loss. Part I requires the same level of substantiation

for any claim that a food, drug, or supplement restores bone strength, reduces or eliminates pain associated with bone ailments, or is superior to any other form of calcium in bioavailability, absorbability, utilization by the body, or treatment or prevention of bone ailments.

In advertising or selling any food drug, or supplement, Part II forbids respondents from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test or study. In making claims regarding the relationship between calcium and osteoporosis, Part III requires respondents to limit themselves to the health claims authorized by the Food and Drug Administration, as set forth in 58 FR 2665 (1993), or to have competent and reliable scientific evidence to support the claims.

Part IV requires respondents to possess competent and reliable scientific evidence to support health-related claims for products containing calcium, and to have scientific substantiation for health-related superiority claims for any food, drug, or supplement.

Part V allow respondents to make representations that are specifically permitted by FDA regulations promulgated pursuant to the Nutrition Labeling and Education Act of 1990. Part VI allows respondents to make any claim for a drug that is permitted in labeling for that drug under any tentative or final FDA standard or under any FDA-approved new drug application.

Parts VII through X relate to respondents' obligations to make available to the Commission materials substantiating claims covered by the order; to notify the Commission of changes in Metagenics's corporate structure; to notify the Commission of changes in Mr. Katke's employment or business affiliations; and to provide copies of the orders to certain Metagenics personnel. Part XI provides that the order will terminate after twenty years under certain circumstances. Part XII requires respondents to file periodic compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97-10971 Filed 4-28-97; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case.

Ann Marie Huelskamp, M.H.S., The Johns Hopkins University School of Medicine

Based upon a report forwarded to the Office of Research Integrity (ORI) by The Johns Hopkins University School of Medicine, information obtained by ORI during its oversight review, and Ms. Huelskamp's own admission, ORI found that Ms. Huelskamp, a research program coordinator in the Oncology Center, The Johns Hopkins University School of Medicine, engaged in scientific misconduct by fabricating patient interview data for a study of quality of life measures in cancer patients. The research was supported by a grant from the National Cancer Institute (NCI), National Institutes of Health (NIH).

ORI also found that Ms. Huelskamp engaged in scientific misconduct by falsifying patient status data by failing to update the status of treated breast cancer patients and misrepresenting data from previous contacts as the updated status for a study. These data were reported in a grant application to NCI and gave the appearance that some patients' outcomes were more favorable than they actually were.

Ms. Huelskamp cooperated fully with the Johns Hopkins investigation. The investigation report acknowledged her excessive workload, the difficulties associated with recruiting and following up on patients, and a lack of supervisory oversight.

Ms. Huelskamp has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which she has voluntarily agreed, for the three (3) year period beginning April 17, 1997:

(1) To exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Ms. Huelskamp's participation is proposed or which uses her in any capacity on PHS-supported research must concurrently submit a plan for

supervision of her duties. The supervisory plan must be designed to ensure the scientific integrity of Ms. Huelskamp's research contribution. The institution must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT:

Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700 Rockville, MD 20852 (301) 443-5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97-10977 Filed 4-28-97; 8:45 am]

BILLING CODE 4160-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Announcement 803]

Public Health Conference Support Grant Program

Introduction

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the expected availability of funds in fiscal year (FY) 1998 for the Public Health Conference Support Grant Program.

CDC and ATSDR are committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all of the Healthy People 2000 priority areas, except HIV Infection. (An announcement for HIV entitled, "Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention" will be published.) (For ordering a copy of "Healthy People 2000," see the Section "Where To Obtain Additional Information.")

Authority

The CDC program is authorized under Section 301 [42 U.S.C. 241] of the Public Health Service Act. The ATSDR program is authorized under Sections 104(i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, [42 U.S.C. 9604 (i)(14) and (15)].

Smoke-Free Workplace

CDC and ATSDR strongly encourage all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Pub. L. 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

CDC eligible applicants include public and private (e.g., community-based, national and regional organizations) nonprofit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority and/or women-owned non-profit businesses are eligible for these grants.

ATSDR eligible applicants are the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Island, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including State universities, State colleges, and State research institutions, must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant.

Note: Effective January 1, 1996, Pub. L. 104-65 states that an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

Approximately \$500,000 from CDC is expected to be available in FY 1998 to fund approximately 25-30 awards. The awards range from \$1,000 to \$30,000 with the average award being approximately \$15,000. The awards will be made for a 12-month budget and project period. The funding estimates may vary and are subject to change, based on the availability of funds.

ATSDR expects to have approximately \$50,000 available in FY 1998 to fund approximately six awards.

It is expected that the average award will be \$8,000, ranging from \$5,000 to \$10,000. Applications requesting funds in excess of \$10,000 may not be fully funded, depending upon availability of funds. The awards will be made for a 12-month budget and project period. Funding estimates may vary and are subject to change.

Use of Funds

- CDC and ATSDR funds may be used for direct cost expenditures: salaries, speaker fees, rental of necessary equipment, registration fees, and transportation costs (not to exceed economy class fare) for non-Federal individuals.

- CDC and ATSDR funds may not be used for the purchase of equipment, payments of honoraria, alterations or renovations, organizational dues, entertainment or personal expenses, cost of travel and payment of a Federal employee, nor per diem or expenses other than local mileage for local participants.

- CDC and ATSDR funds may not be used for reimbursement of indirect costs.

- Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

- CDC and ATSDR funds may be used for only those parts of the conference specifically supported by CDC or ATSDR as documented in the grant award.

- CDC and ATSDR will not fund 100% of any conference proposed under this announcement.

- CDC and ATSDR will not fund a conference after it has taken place.

Background

CDC supports local, State, academic, national and international health efforts to prevent unnecessary disease, disability, and premature death, and to improve the quality of life. This support often takes the form of education, and the transfer of high quality research findings and public health strategies and practices through symposia, seminars and workshops. Through the support of conferences and meetings of important players in the areas of public health research, education, and prevention application, CDC is meeting its overall goal of dissemination and implementation of new cost effective intervention strategies.

ATSDR's systematic approaches are needed for linking applicable resources in public health with individuals and organizations involved in the practice of

applying such research. Mechanisms are also needed to shorten the time frame between the development of disease prevention and health promotion techniques and their practical application. ATSDR believes that conferences and similar meetings that permit individuals engaged in health research, education, and application (related to actual and/or potential human exposure to toxic substances) to interact are critical for the development and implementation of effective programs to prevent adverse health effects from hazardous substances.

Purpose

The purpose of the CDC and ATSDR conference support grants is to provide PARTIAL support for specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (Except HIV Infection).

CDC applications are being solicited for conferences on:

- (1) Chronic disease prevention;
- (2) infectious disease prevention;
- (3) control of injury or disease associated with environmental, home, and workplace hazards;
- (4) environmental health;
- (5) occupational safety and health;
- (6) control of risk factors such as poor nutrition, smoking, lack of exercise, high blood pressure, and physical stress;
- (7) health education and promotion;
- (8) laboratory practices; and
- (9) efforts that would strengthen the public health system.

ATSDR applications are being solicited for conferences on: (1) Health effects of hazardous substances in the environment; (2) disease and toxic substance exposure registries; (3) hazardous substance removal and remediation; (4) emergency response to toxic and environmental disasters; (5) risk communication; (6) environmental disease surveillance; and (7) investigation and research on hazardous substances in the environment.

Because conference support by CDC and ATSDR creates the appearance of CDC and ATSDR co-sponsorship, there will be active participation by CDC and ATSDR in the development and approval of those portions of the agenda supported by CDC and ATSDR funds. In addition, CDC and ATSDR will reserve the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection, and site selection. CDC and ATSDR funds will not be expended for non-approved portions of meetings. Contingency awards will be made allowing usage of only 10% of the total amount to be awarded until a final full agenda is

approved by CDC and ATSDR. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda. CDC and ATSDR reserve the right to terminate co-sponsorship if they do not concur with the final agenda.

- Any conference sponsored by CDC or ATSDR shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility as per ADAAG also addresses accommodations for persons with sensory impairments.

- The conference organizer(s) may use CDC's name only in factual publicity for the conference, and should understand that CDC involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, products or service.

Because CDC's and ATSDR's missions and programs relate to the promotion of health and the *prevention* of disease, disability, and premature death, only conferences focusing on such programmatic areas will be considered. Those topics concerned with health-care and health-service issues and areas *other than prevention* should be directed to other public health agencies.

Recipient Requirements

CDC and ATSDR grantees must meet the following requirements:

A. Manage all activities related to program content (e.g., objectives, topics, attendees, session design, workshops, special exhibits, speakers, fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC and ATSDR project personnel.

B. Provide draft copies of the agenda and proposed ancillary activities to CDC and ATSDR for approval. Submit copy of final full agenda and proposed ancillary activities to CDC and ATSDR for approval.

C. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press, etc.). CDC and ATSDR must review and approve any materials with reference to CDC and ATSDR involvement or support.

D. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures, etc.).

E. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

F. Analyze data from conference activities that pertain to the impact on

prevention. Adequately assess increased knowledge, attitudes, and behaviors of the target attendees.

G. ATSDR grantees must develop and conduct education and training programs on prevention of health effects of hazardous substances.

H. ATSDR grantees must collaborate with ATSDR staff in reporting and disseminating results and relevant prevention education and training information to appropriate Federal, State, and local agencies, and the general public.

Technical Reporting Requirements

An original and two copies of the financial status and performance reports are due 90 days after the end of the budget/project period. The performance report should include: (1) Grant number; (2) title of the conference; (3) name of the principal investigator, program director, or coordinator; (4) name of the organization that conducted the conference; (5) a copy of the agenda; (6) a list of individuals who participated in the formally planned sessions of the meeting; and (7) a summarization of the results of the meeting, including a discussion of the accomplishments related to stated conference objectives.

With the prior approval of CDC and ATSDR, copies of proceedings or publications resulting from the conference may be substituted for the performance report, provided they contain the information requested in items (1) through (7) above.

Letter of Intent

Potential applicants must submit an original and two copies of a one-page typewritten Letter of Intent (LOI) that briefly describes the title, location, purpose, and date of the proposed conference and the intended audience (number and profession). The LOI must also include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100%) being requested from CDC and ATSDR.

Requests for 100% funding will be considered non-responsive to this program announcement and returned to applicant without review. Current recipients of CDC and ATSDR funding must provide the award number and title of the funded programs. No attachments, booklets, or other documents accompanying the LOI will be considered. The one page limitation (inclusive of letterhead and signatures), must be observed or the Letter of Intent will be returned without review.

Letters of Intent will be reviewed by program staff for consistency with:

- CDC's mission of health promotion and disease prevention goals, agency priorities, and the purpose of this program; and

- ATSDR's mission to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

Following submission of a LOI, successful potential applicants will receive written notification to submit an application for funding. Applications may be accepted by CDC and ATSDR only after the LOI has been received by CDC and ATSDR and written invitation from CDC and ATSDR has been received by prospective applicant. An invitation to submit a final application will be made on the basis of the proposed conference's relationship to the CDC and ATSDR funding priorities and on the availability of funds.

Application Content

Applications may be submitted only after a Letter of Intent has been approved by the CDC and ATSDR and a written invitation from the CDC and ATSDR has been extended to the prospective applicant.

Invitation to submit an application does not constitute a commitment to fund the applicant. Applicants invited to apply must use application Form PHS 5161-1, and the following must be included:

A. *Two-Page Overview*—The overview must include the following:

1. Title of conference—include the term "conference," "symposium," "workshop," or similar designation to assist in the identification of the request;
2. Location of conference—city, State, and facility, if known;
3. Expected registration—target audience and number of persons expected to attend;
4. Date(s) of conference; and
5. Summary of conference objectives, format, and projected agenda, including a list of principal areas or topics to be addressed.

B. *Brief Background of Applicant Organization*—Include the organizational history and purpose, and previous experience related to the proposed conference topic.

C. *Narrative*—The narrative should cover the following:

1. A clear statement of the need for and purpose of the conference. This statement should also describe any problems the conference will address or seek to solve, and the action items or resolutions it may stimulate.

2. An elaboration on the conference objectives and target population. A *proposed agenda must be included*. A list of the principal areas or topics to be addressed, including speakers/facilitator, should be included. In addition, information should be provided about all other national, regional, and local conferences held on the same or similar subject during the last three years (if known).

3. A clear description of the evaluation plan and how it will assess the accomplishments of the conference objectives.

4. An operational plan or step-by-step schedule of major conference planning activities necessary to attain specified objectives. This schedule will include target dates by which the activities will be accomplished.

5. A description of any support (e.g., monetary, staff) or co-sponsorship related to this conference. (It is necessary that organizations seeking these grant funds be able to show additional support in the form of finances, services, etc., because this program provides Partial funding only.) For each organization contributing funding, a letter must be included documenting that support.

6. Any other information that will support this request for funds.

Note: Essential information requested in the Narrative should NOT be included as appendices to the application.

D. Biographical Sketches—Biographical sketches are needed for the individuals responsible for planning and implementing the conference. Experience and training related to conference planning and implementation as it relates to the proposed topic should be noted.

E. Budget Information—A total conference budget that includes the share requested from CDC as well as those funds from other sources (including income from the conference), and a justification consistent with the purpose, objectives, and operational plan of the conference. Also, identify the source(s) of the non-Federal share.

F. Letters of Endorsement or Recommendations—Letters of endorsement or recommendations supporting the organization and its capability to perform the proposed conference activity.

Evaluation Criteria

CDC and ATSDR applications will be reviewed and evaluated according to the following criteria (TOTAL 100 POINTS): (Please note the following: Section A.1., is ATSDR specific; only ATSDR applications will be reviewed and

evaluated using this criteria. Section A.2., is CDC specific. All other sections in these criteria are applicable to both CDC and ATSDR. Evaluation Criteria F. Budget Justification and Adequacy of Facilities, although not scored, contain a reference to funding information specific only to ATSDR applications.)

A. Proposed Program and Technical Approach (25 points)

Evaluation will be based on:

1. The public health significance of the proposed conference including the degree to which the conference can be expected to influence the prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases and other sources of pollution present in the environment. (Applicable to ATSDR applications only.)

2. The applicant's description of the proposed conference as it relates to specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (except HIV infection, mental health, and substance abuse), including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. Evaluation will be based also on the extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with health promotion and disease prevention. (Applicable to all CDC applications except ATSDR.)

3. The applicant's description of conference objectives in terms of quality and specificity and the feasibility of the conference based on the operational plan.

B. Applicant Capability (10 points)

Evaluation will be based on the adequacy of applicant's resources (additional sources of funding, organization's strengths, staff time, proposed facilities, etc.) available for conducting conference activities.

C. The Qualification of Program Personnel (20 points)

Evaluation will be based on the extent to which the application has described:

1. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

2. The competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish conference objectives.

3. The degree to which the application demonstrates knowledge of

nationwide and education efforts currently underway which may affect, and be affected by, the proposed conference.

D. Conference Objectives (25 points)

Evaluation will be based on:

1. The overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall work plan and timetable for accomplishment.

2. The likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals, and the feasibility of the project in terms of the operational plan.

E. Evaluation Methods (20 points)

Evaluation will be based on the extent to which evaluation mechanisms for the conference will enable adequate assessment of increased knowledge, attitudes, and behaviors of the target attendees.

F. Budget Justification and Adequacy of Facilities (not scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting conference activities.

The following is applicable for ATSDR applications only: Applications requesting funds in excess of \$10,000 may not be fully funded, depending upon availability of funds.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The CDC Catalog of Federal Domestic Assistance Number is 93.283. ATSDR's Catalog of Federal Domestic Assistance Number is 93.161.

Other Requirements

Americans with Disabilities Act Accessibility Guidelines (ADAAG)

All conferences sponsored by CDC or ATSDR shall be held in facilities that are fully accessible to the public as required by ADAAG. Accessibility under ADAAG addresses accommodations for persons with sensory impairments, as well as persons

with physical disabilities or mobility limitations. Prior to receiving an award, the applicant organization must assure compliance with the ADAAG.

Submission Requirements and Deadlines

A. Letter of Intent (LOI)

1. *One Original and Two Copies* of the LOI must be postmarked by the following deadline dates in order to be considered in the application cycles. (FACSIMILES ARE NOT ACCEPTABLE.)

2. Letter of Intent Due Dates:

October 6, 1997
April 6, 1998

B. Application

1. *One Original and Two Copies* of the invited application must be submitted on PHS Form 5161-1 (OMB Number 0937-0189) and must be postmarked by the following deadline dates in order to be considered in the application cycles.

2. Application Due Dates:

Earliest Possible Award Date:

January 12, 1998
June 8, 1998
March 1, 1998
July 30, 1998

Applications may be accepted by CDC and ATSDR ONLY after the LOI has been reviewed by CDC and ATSDR and *written invitation* from CDC and ATSDR has been received by prospective applicant. An invitation to submit an application does not constitute a commitment to fund. Availability of funds may limit the number of Letters of Intent, regardless of merit, that receive an invitation to submit an application.

C. Addresses for Submission of Letters of Intent and Invited Applications

One original and two copies of the Letters of Intent and invited applications must be postmarked on or before the deadline date and mailed to: Henry S. Cassell, III, Grants Management Officer, Attention: Karen Reeves, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E-09, Atlanta, GA 30305.

D. Deadline

Letters of Intent and Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or
2. Postmarked on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a

legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

E. Late Applications

Applications that do not meet the criteria in D.1. or D.2. above are considered late applications and will be returned to the applicant without review.

Where To Obtain Additional Information

To receive additional written information, call (404) 332-4561. You will be asked to leave your name, address, telephone number and refer to Announcement Number 803. You will receive a complete program description, application form, and information on application procedures. CDC/ATSDR will not send applications by facsimile or express mail.

This and other CDC/ATSDR announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is <http://www.cdc.gov>.

If you have any questions after reviewing the contents of all documents, you may contact: Karen Reeves, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E-09, Atlanta, GA 30305. Telephone (404) 842-6596, E-Mail Address: ker1@cdc.gov.

Please refer to Announcement Number 803 when requesting information, submitting your Letter of Intent and submitting the invited application in response to the announcement.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

Dated: April 23, 1997.

Claire Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC), and Deputy Administrator, Agency for Toxic Substances and Disease Registry (ATSDR).

[FR Doc. 97-10967 Filed 4-28-97; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part D (Food and Drug Administration), Chapter DA, Office of the Commissioner, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (35 FR 3685, February 25, 1970, and 60 FR 56605, November 9, 1995, as amended most recently in pertinent part at 54 FR 50536, December 7, 1989) is amended to reflect revised functions and title change for the former Executive Secretariat to the newly established Office of Executive Secretariat (OES), Office of the Commissioner, Food and Drug Administration (FDA).

The newly established OES will continue to serve as the focal point for the coordination, identification, development, and implementation of the agency's highest program priorities for the Commissioner. The OES staff will advise the Commissioner, Deputy Commissioners, Senior Staff members and other key agency officials on all activities that affect agencywide programs, projects and initiatives. This reorganization will simplify the organizational structure within the Office of the Commissioner. This action will further enhance and streamline the management and coordination of the agency's Executive Secretariat functions.

The proposed revisions are as follows:

1. Delete the *Office of Executive Operations (DAB)* under the Office of the Commissioner (DA), in its entirety and replace with the following:

Office of Executive Secretariat (DAB). Coordinates identification of and expedites development and implementation of the agency's highest program priorities and initiatives for the Commissioner.

Develops and maintains management information necessary for monitoring the Commissioner's and agency's goals and priorities.

Advises the Commissioner, Deputy Commissioners, Senior Staff members and other key agency officials on all activities that affect agencywide programs, projects, and initiatives. Informs appropriate agency staff of the decisions and assignments made by the Commissioner and Deputy Commissioners.

Assures that materials in support of recommendations presented for the

Commissioner's consideration are comprehensive, accurate, fully discussed and encompass the issues involved.

Provides correspondence control for the Commissioner and controls and processes all agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warnings and bottleneck problems with executive correspondence.

Provides direct support to the Commissioner and Deputy Commissioners including briefing materials, background information for meetings, responses to outside inquiries, and maintenance and control of the Commissioner's working files.

Performs agencywide assignments involving complex problems and issues related to agency programs, strategies and activities, including preparation of special reports for the Department.

Coordinates the agency's communications with the Public Health Service, DHHS, and the White House including correspondence for the Assistant Secretary for Health and Secretarial signatures.

2. Delete the subparagraph *Executive Secretariat (DAB-1)*, under the Office of Executive Operations (DAB) in its entirety.

3. Delete the subparagraph *Program Management Staff (DAB-2)*, under the Office of Executive Operations (DAB) in its entirety.

4. **Prior Delegations of Authority.** Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: March 14, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 97-10981 Filed 4-28-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HSQ-232-N]

Medicare Program: Initiative Involving Facilities That Furnish Hemodialysis Treatments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces our planned initiative to demonstrate the feasibility of collecting, collating, and analyzing data about the treatment of hemodialysis patients. The collected data will be distributed to participating facilities in a timely manner so that it may be used for quality improvement. This effort is intended to lead to the development of a quality assessment system for hemodialysis facilities that will permit facilities to track, on a routine basis, facility specific health and clinical outcome measures. The system is intended ultimately to permit facilities to use this information to design and implement specific interventions to improve care at these facilities and to test the ability of regulatory agencies to use this information to recognize best performers and to focus their survey resources. If feasible, facility performance indicators results can disseminated to patients and facilities in the future. This initiative will have several phases. The first phase is described in this notice.

FOR FURTHER INFORMATION CONTACT: Judith J. Kari, (410) 786-6829 or Jacquelyn A. Polder, (206) 615-2317.

SUPPLEMENTARY INFORMATION:

I. Overview

In July 1995, the President and Vice President of the United States announced the Administration's "Reinventing Health Care Regulations" initiative. This initiative is part of a larger strategy to reduce regulatory burden on the American public. HCFA also is committed to reducing regulatory burden while meeting our responsibility for ensuring quality health care services for Medicare beneficiaries.

We have several initiatives underway involving facility conditions of coverage or participation that are directed toward improving outcomes of care and satisfaction for patients, while at the same time reducing the burden on providers, and increasing flexibility and expectations for continuous improvement. This notice concerns one phase of an initiative involving facilities that furnish hemodialysis treatments to patients with end stage renal disease (ESRD). We believe that by establishing information exchange systems between ESRD facilities and HCFA we can collect identified clinical indicators of care; analyze the data collected; and use it to design interventions to improve care. Moreover, by using electronic systems effectively such information can be collected and used in a timely fashion.

If we determine that this is a good monitoring system, ultimately it could

decrease regulatory burden. In the future, routine surveys of these facilities might be conducted with less frequency than they are now, or in ways that allow us to assess facility compliance without being onsite. Surveys would still be conducted in response to complaints about the quality of care or if the data indicate a potential serious problem. This notice announces our initiative to test such an infrastructure in a limited area.

The project will test a new mechanism that will permit hemodialysis facilities to provide patient specific clinical information to us on a regular basis for the purpose of evaluating the quality of care being provided to patients with ESRD. They will evaluate care by comparing clinical information within their own facility over time as well as comparing their clinical data against national and network data. The primary goal of this project is to improve the quality of care to Medicare beneficiaries with ESRD by tracking specific clinical indicators. A secondary goal is to collaborate with hemodialysis providers in the designing of a measurement system that will assist facilities in their efforts to improve care, and ultimately reduce the regulatory burden on these facilities. In the future, HCFA will explore the possibilities of awarding a certificate of achievement to facilities that document sustained achievement in the outcome indicators over a period of time.

II. Background

In 1993, as part of our effort to ensure quality care for Medicare ESRD beneficiaries, we began a descriptive epidemiological evaluation project called the End Stage Renal Disease Core Indicators Project. The core indicators project was designed to assist us and health professionals who provide care to dialysis patients by regularly collecting and analyzing certain clinical data about ESRD hemodialysis patients that are indicators of the quality of care being provided. The "core" indicators initially selected for evaluation included adequacy of dialysis (as measured by pre- and post-dialysis blood urea nitrogen levels to calculate an urea reduction ratio), anemia (as measured by hematocrit levels), blood pressure control, and nutritional status (as measured by serum albumin levels). They were developed by a workgroup with representation from facilities and the professional community, including the National Kidney Foundation, Forum of ESRD Networks, American Nephrology Nurses Association, National Renal Administrators Association, and Renal Physicians

Association. Data on these core indicators have been collected on a national random sample (3 percent) of patients with ESRD who were dialyzed during the last calendar quarters of 1993, 1994, and 1995. The preliminary analysis of data collected and analysis for patients dialyzed during the last quarter of 1995 indicates a measurable national improvement in the adequacy of dialysis and reduction of anemia.

The 3 percent random national sample consists of approximately 7,000 patients of the over 228,000 end stage renal disease patients in the United States. With approximately 2,747 hemodialysis facilities in the United States, the average number of patients per facility included in the core indicators project is between 2 and 4.

The core indicators project has been very useful because it provides timely information about the quality of care being provided to patients throughout the national system. Perhaps the most important message from the first 3 years of the Core Indicators Project is that there is a significant opportunity to improve ESRD care throughout the country. The Core Indicators Project has enhanced the expertise of HCFA and the ESRD provider community in using clinical indicators to improve quality of hemodialysis care.

While the study is a statistically valid measure of national performance and network level performance, it was not designed to measure care provided at the facility level. An essential next step is to develop the capacity to measure care at the facility level in order to assist us and ESRD providers to design and implement quality improvement interventions to address each facility's opportunities to improve care.

III. Hemodialysis Facilities of Achievement Project

A. Scope of Initiative

The ultimate goal of the Hemodialysis Facilities of Achievement project is to foster continuous quality improvement efforts in ESRD facilities. This will be accomplished through an electronic data collection system that can provide the information needed to design interventions to improve care at such facilities.

We currently use periodic on-site surveys to measure whether facilities approved to participate in Medicare meet the quality standards contained in Federal law and regulations. The surveys are carried out by State survey agency personnel operating under Federal guidelines; however, because of budget limitations these surveys are conducted infrequently. Moreover, the

standards do not emphasize outcome measures that can be used for continuous quality improvement. On a separate track, these standards, called conditions for coverage, are also under revision. It is anticipated that information learned from this project will be useful in determining how outcome measures can best be used under revised conditions for coverage.

The project we are announcing in this notice focuses on quality of care through establishing a systematic collection of clinical data on all of the patients within a limited number of participating volunteer facilities. It builds on the knowledge and experience that we have gained through the Core Indicators Project.

It will feature: A system to collect uniform clinical information on each patient; a method to transmit these data to us; and a technique to analyze these data that facilities will use to improve quality of care. We will assist participating facilities to:

- Establish baseline measures of identified clinical indicators,
- Use national and regional data from the Core Indicators Project to set facility specific quality improvement goals, and
- Provide a mechanism by which facilities can periodically measure and monitor their progress over time.

This project will permit ESRD networks and us to help facilities implement and evaluate intervention strategies responsive to the needs of specific facilities, types of patients, or geographic areas.

It is our belief that an outcome-oriented approach to quality can reduce the cost and improve the quality of the ESRD program and ultimately reduce regulatory burden. This project will take advantage of electronic communication technology through a system to track identified quality indicators.

B. Selection of Participants

Our regional offices have the primary responsibility for oversight of quality of care provided to Medicare beneficiaries. In the case of ESRD facilities, the regional office works with the State survey agencies and with ESRD networks to carry out this oversight responsibility. The Seattle regional office will coordinate this project; the Seattle office was responsible for the Core Indicators Project and thus has both experienced staff and data support capacity.

The Seattle regional office staff will be responsible for the operation of the project from initial assessment of capacity of facilities through evaluation. Based on their evaluation of the computer capacity and capabilities of

facilities in selected geographic areas they will: select participating sites; establish a mechanism for electronic communication; develop software for the project; train participating facilities in the use of equipment and data; collect and analyze data on all patients in participating facilities on a regular basis; profile and share these data with facilities and networks; participate in planning quality improvement initiatives at the facility and network level; and determine which facilities are to be recognized for their successful participation in the project.

To begin the project, we will contact all hemodialysis facilities in a defined geographic area to elicit interest in participation and to assess the computer capacity and capability of the facility. Unless the response overwhelms available resources, we intend to include any facility in the geographic area that wants to participate and has the computer capability to participate.

C. Establishing Communication and Information Sharing

Software and electronic access will be developed and field tested by the Seattle regional office. The software used will be similar to data input forms that are used in the Core Data Indicators project and we anticipate that facilities will submit similar information. Once these mechanisms are secure, regional office staff will begin the training phase of the project. The regional office will provide assistance to assure that all project participants understand how to use the equipment and software programs that will be at the center of this project. When each facility is trained and ready, it will be asked to transmit to the Seattle regional office identified clinical information similar to data collected as part of the Core Indicators Project. Throughout the duration of the project, the facilities will periodically submit clinical data to us and will work with us on evaluation of the data.

D. Clinical Indicators

The clinical indicators that will be collected for the first phase of the project will be similar to that of the Core Indicators Project which were determined in consultation with renal care organizations and patient groups. We have a data base with several years of data from the Core Indicators Project, so we expect that the historical data base will have an influence on suggestions for data collection.

E. Recognizing Facilities That Successfully Participate in the Project

The long term objective of this project is to assist hemodialysis facilities in

developing the capacity and ability to engage in continuous quality improvement. This will contribute to improved care for patients and reduced regulatory burden for providers. This is not a simple endeavor nor one that will be put in place quickly. It will be important to recognize achievement by the facilities as they progress towards the long term objective.

We place a high level of emphasis on helping providers develop and maintain programs of quality improvement. In the case of hemodialysis facilities we are demonstrating this commitment to work in collaboration with providers to achieve that goal.

It is important to note that this is just the first phase of the project. The real test of success will be when facilities have gained the experience to have ongoing systems in place to assess the quality of care they are providing to patients by evaluating quality indicators of outcomes of care. With measurement systems in place, hemodialysis facilities will be able to provide important information to patients and to us about the quality of care being provided.

F. Evaluation of the Project

Information about project results will be packaged in brochures and newsletters so that ESRD patients and non-participating ESRD facilities will be aware of the results. We will continuously evaluate this project as it progresses and perform a separate analysis upon completion. We believe that all of the participants in this project will learn a great deal, and we will remain open to the need to make accommodations to unique situations that may arise. We are convinced that this project has enormous potential to improve patient care, lessen regulatory burden, and use scarce resources more wisely. The definitive measure of success of this project will be that systems for collecting patient specific clinical data are in place, that transmission of data to us is done at regular intervals, and that hemodialysis facilities are skilled in using the data to design interventions to continuously improve care to their patients.

IV. Collection of Information Requirements

This notice contains information collection requirements, which are currently exempt from the Paperwork Reduction Act of 1995, as outlined in 5 CFR 1320.3(h)(5). The project described in this notice is an extension of the National Core Indicators Project, which has been reviewed and approved by the National Institutes of Health (NIH) Clinical Exemption Review Committee;

NIH Case # CE95-02-02, February 1995. As a condition of this approval, PHS/HCF A will submit a copy of this updated data collection protocol, which will gather customary medical information from patient records, captured during the course of a medical examination, to the United States Renal Data System (NIH) before the study is initiated.

Both the Core Indicators Project and the extension pilot project described in this notice support a current REGO II effort to improve the quality of care provided to Medicare beneficiaries. The Core Indicators Project systematically, annually, collects clinical information associated with the quality of care provided to a sample of End Stage Renal Disease (ESRD) patients. This notice describes a pilot extension of that project which expands the effort by collecting information from patient records more frequently and communicating the information more efficiently to HCFA in an electronic fashion for HCFA/PHS evaluation.

It is envisioned that core information regarding outcomes of care on all ESRD Medicare beneficiaries will eventually be shared with HCFA electronically on a regular basis, to provide HCFA/PHS the data to initiate and monitor quality improvement efforts. If this pilot is successful, and HCFA decides to implement the REGO II project based on the currently approved Core Indicators Project, HCFA will seek full OMB approval for the data collection requirements that fall under the purview of the Paperwork Reduction Act.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sec. 1881 of the Social Security Act (42 U.S.C. 1395rr). (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 14, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 1, 1996.

Donna E. Shalala,

Secretary.

Note: This document was received in the Office of the Federal Register on April 24, 1997.

[FR Doc. 97-11025 Filed 4-28-97; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the National Advisory Council for Human Genome Research

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Human Genome Research Institute, May 19 and 20, 1997, National Institutes of Health, Building 31, C wing, 6th Floor, Conference Room 10, Bethesda, MD.

This meeting will be open to the public on Monday, May 19, 8:30 a.m. to approximately 3:00 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 19, from 3:00 p.m. to recess and on May 20 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Human Genome Research Institute, National Institutes of Health, Building 31, Room 4B09, Bethesda, Maryland 20892, (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 594-0654, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: April 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-10964 Filed 4-28-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee G—Initial Review Group Education Subcommittee.

Date: June 24–25, 1997.

Time: 8 a.m. to 5 p.m.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: John W. Abrell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., Room 635B, Bethesda, MD 20892, Telephone: 301–496–9767.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: April 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–10965 Filed 4–28–97; 8:45 am]

BILLING CODE 4140–01–M

Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 24 from 9 a.m. until approximately 4 p.m. for general remarks by the Director, Intramural Research Program, National Eye Institute (NEI), on matters concerning the intramural program of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 24 from approximately 4 p.m. until recess and on June 25 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Retinal Cell and Molecular Biology. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Marie Watkins, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Watkins in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health.)

Dated: April 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–11005 Filed 4–28–97; 8:45 am]

BILLING CODE 4140–01–M

The NAEC meeting will be open to the public on June 12 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on June 12 from approximately 11:30 a.m. until adjournment at approximately 5 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Council Assistant, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: April 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–11006 Filed 4–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 24 and 25, 1997 in Building 31, Room 6A35, National

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of the Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on June 12, 1997, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda, Maryland.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Heart, Lung, and Blood Institute at 8:00 a.m. on June 5–6, 1997, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7S235, Bethesda, Maryland 20892.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec 10(d) of Pub. L. 92-463, the entire meeting will be close to the public for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, (301) 496-2116, will furnish substantive program information.

Dated: April 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-10962 Filed 4-28-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences meeting:

Committee Name: Minority Program Review Committee, MARC, Minority Access to Research, Careers Sub-Committee.

Date: June 12-13, 1997.

Time: 8:30 a.m.—adjournment.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS-19G, Bethesda, MD 20892-6200, 301-594-2849.

Purpose: To review institutional research training grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and

Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: April 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-10959 Filed 4-28-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting.

Name of SEP: Cellular/Molecular Pathophysiology of Mental Retardation (TELECONFERENCE).

Date: May 8, 1997.

Time: 10:30 a.m.—adjournment.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E03, Rockville, Maryland 20852.

Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301-496-1485.

Purpose/Agenda: To review and evaluate research grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children,] National Institutes of Health.)

Dated: April 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-10960 Filed 4-28-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Preclinical Evaluation of Therapies for Microsporidial Infections (Telephone Conference Call).

Date: May 2, 1997.

Time: 1:00 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C01, Bethesda, MD 20892, (301) 496-2550.

Contact Person: Dr. Vassil Georgiev, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, MD 20892-7610, (301) 496-8206.

Purpose/Agenda: To evaluate a contract proposal.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunological Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: April 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-10961 Filed 4-28-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting of the National Advisory Council for Nursing Research and its Subcommittee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Institute of Nursing Research, National Institutes of Health and its Planning Subcommittee on June 10-11, 1997, National Institutes of Health, William H. Natcher Building, 45 Center Drive, Conference Room E1 and E2, Bethesda, Maryland 20892.

The Council meeting will be open to the public on June 10 from 1:00 p.m. to recess and on June 11 from approximately 9:00 a.m. to 10:15 a.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from 10:15 a.m. to adjournment on June 11. There will also be a meeting, closed to the public, of the Planning Subcommittee on June 10 from 9:00 a.m. to 11:00 a.m. in Building 31, Room 5B03. These meetings are closed for the review, discussion and evaluation of individual grant application. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meetings, rosters of committee members, and other information may be obtained from the Executive Secretary, Dr. Lynn Amende, NINR, NIH, Building 45, Room 3AN-12, Bethesda, Maryland 20892, 301/594-5968. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should contact the Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: April 23, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
 [FR Doc. 97-10963 Filed 4-28-97; 8:45 am]
 BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Mental Health.

In accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., the entire meeting will be closed for the review, discussion, and evaluation of staff scientists and individual programs and projects. The subject matter to be reviewed contains information of a confidential nature, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Agenda/Purpose: To evaluate recent reviews of selected intramural research projects and make final recommendations.

Committee Name: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 16, 1997.

Time: 8:30 a.m.

Place: Building 36, Room 1B07, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert W. Dennis, Executive Secretary, Building 10, Room 4N222, 9000 Rockville Pike, Bethesda, MD 20892; *Telephone:* 301-496-4183.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: April 24, 1997.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
 [FR Doc. 97-11008 Filed 4-28-97; 8:45 am]
 BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: May 6, 1997.

Time: 2 p.m.

Place: NIH, Rockledge 2, Room 5168, Telephone Conference.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435-1245.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Behavioral and Neurosciences.

Date: May 13, 1997.

Time: 1 p.m.

Place: NIH, Rockledge 2, Room 5186, Telephone Conference.

Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 6701 Rockledge Drive, Room 5186, Bethesda, Maryland 20892, (301) 435-1252.

Name of SEP: Behavioral and Neurosciences.

Date: May 20, 1997.

Time: 2 p.m.

Place: NIH, Rockledge 2, Room 5172, Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435-1247.

Name of SEP: Multidisciplinary Sciences.

Date: May 21, 1997.

Time: 1 p.m.

Place: NIH, Rockledge 2, Room 5120, Telephone Conference.

Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 6701 Rockledge Drive, Room 5120, Bethesda, Maryland 20892, (301) 435-1179.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: April 24, 1997.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
 [FR Doc. 97-11007 Filed 4-28-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Treatment of Cancer Using Human Chorionic Gonadotropin (hCG)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Application Serial Number 08/286,299, and entitled; "Treatment of Cancer Using Human Chorionic Gonadotropin (hCG)", and corresponding U.S. and foreign patent applications to Serono Laboratories, Inc., of Norwell, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The field of use for this prospective exclusive license may be limited to "Treatment of Cancer".

SUPPLEMENTARY INFORMATION: Clinical observations of the regression of Kaposi's sarcoma (KS) in women during pregnancy and its return after birth has suggested the existence of a naturally-occurring KS therapeutic. Research performed at the National Cancer Institute suggested the cause of this phenomena was hCG. hCG is a hormone which is naturally produced by the placenta during pregnancy. In the male, hCG stimulates the development of accessory organs. hCG is composed of an alpha chain that is identical in structure to several other hormones and a unique beta chain. The beta chain of hCG was found to induce apoptosis, or programmed cell death in primary cultures of KS cells. Studies performed in KS tumors in nude mice confirmed the anti-KS effect of hCG.

The above captioned patent application describes the use of various hormones in the treatment of cancer. In particular, the use of hCG or the β

subunit thereof and luteinizing hormone or the β subunit thereof in the treatment of cancer, including breast, prostate, ovary and stomach carcinomas and, in particular, KS are described. KS is the most common neoplasm in HIV-infected patients and hCG has been used to treat KS patients (Gill, et al., "The Effects of Preparations of Human Chorionic Gonadotropin on AIDS-related Kaposi's Sarcoma", New Eng. J. Med. 1996 Oct. 24;335(17):1261-69.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; Telephone: 301/496-7735 ext. 247; Facsimile: 301/402-0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before June 30, 1997 will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 16, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97-11009 Filed 4-28-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Programs Eligible for Inclusion in Fiscal Year 1998 Annual Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 1998 annual funding agreements with self-governance tribes and lists programmatic targets for each of the non-BIA bureaus, pursuant to section

405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 1998.

ADDRESSES: Inquiries or comments regarding this notice may be directed to the Office of Self-Governance, 1849 C Street NW, 2548 MIB, Washington, DC 20240. Telephone (202) 219-0240 or to the bureau points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination and Education Assistance Act Amendments of 1994 (P.L. 103-413, the "Self-Governance Act" or the "Act") instituted a permanent tribal self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, functions, services, and activities or portions thereof in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, activities, and functions or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements. Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is "otherwise available to Indian tribes or Indians," can be administered by a tribal government through a self-governance agreement. The Department interprets this provision to authorize the inclusion of not only programs eligible for self-determination contracting under Title I of the Indian Self-Determination and Education Assistance Act (P.L. 93-638), but also other programs which the Department determines are appropriate and to the extent available under other laws for contracting out or including in cooperative agreements.

Section 403(b)(2) also specifies that "nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law." Under section 403(c) of the

Act, the Secretary may include other programs, services, functions, and activities, or portions thereof, that are of "special geographic, historical, or cultural significance" to a self-governance tribe.

Under section 403(k) of the Self-Governance Act, annual agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, we will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

II. Annual Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior

During Fiscal Year 1995, two annual funding agreements to commence in Fiscal Year 1996 were negotiated by the Bureau of Reclamation and self-governance tribes for portions of the Central Arizona Project. One was an annual funding agreement with the Salt River Pima Maricopa Indian Community to administer and construct the community distribution system on reservation lands as authorized by section 301(a) of the Colorado River Basin Project Act. The work and terms of that funding agreement are now complete. An annual funding agreement with the Gila River Indian Community to develop portions of the irrigation system on their reservation as authorized by section 301(a) of the Colorado River Basin Project Act was begun in Fiscal Year 1996 and a successor agreement is continuing in Fiscal Year 1997.

In Fiscal Year 1996, the National Park Service and Kawerak, Inc. negotiated an annual funding agreement supported by funds from the shared Beringian heritage program. This work will result in a more complete record of Inuit, Siberian Yupik and Northern Norton Sound Yupik culture, history, and traditional knowledge of the Bering Straits region.

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Following this paragraph is a listing by bureau of the types of non-BIA programs, or portions thereof, that may

be eligible for self-governance annual funding agreements because they are either "otherwise available to Indians" and not precluded by any other law, or may have "special geographic, historical, or cultural significance" to a participating tribe. This summary is a general listing that represents the bureaus' best estimates of activities that may be available for negotiation at the request of the self-governance tribe. Since 1996, the Bureau of Mines no longer exists and therefore, is not on this list.

The Department will also consider for inclusion in annual funding agreements other programs or activities not included in this listing, but which, upon request of a self-governance tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. If you have any questions about these programs or other programs that you may be interested in, please contact the appropriate bureau representative.

A. Eligible Programs of the Bureau of Land Management (BLM)

BLM management responsibilities cover a wide range of areas such as recreational activities, timber, range and minerals management, wildlife habitat management and watershed restoration. In addition, BLM is responsible for the survey of certain Federal and tribal lands. Two programs also provide tribal services: (1) Tribal and allottee minerals management; and (2) Survey of tribal and allottee lands. BLM contracts out some of its activities in the management of public lands. These and other activities, dependent upon the availability of funds, the need for specific services, or the self-governance tribe demonstrating a special geographic, cultural, or historical connection, may be available for inclusion in agreements. Once a tribe has made initial contact with BLM, more specific information will be provided by the respective BLM State office.

Programs Otherwise Available

1. *Cadastral Survey.* Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and may be available for inclusion in an annual funding agreement.

2. *Cultural Heritage.* Cultural heritage activities, such as research and inventory, may be available in specific States.

3. *Forestry Management.* Activities, such as environmental studies, tree planting, thinning and similar work may be available in specific States.

4. *Minerals Management.* Inspection and enforcement of Indian oil and gas operations, infection, enforcement and production verification of Indian sand and gravel operations: These activities, already available for contracts under Title I of the Act, may be available for inclusion in an annual funding agreement.

5. *Range Management.* Activities such as re-vegetation, noxious weed control, fencing, and similar activities may be available in specific States.

6. *Riparian Management.* Activities such as facilities construction, erosion control, rehabilitation, and similar activities may be available in specific States.

7. *Recreation Management.* Activities such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

8. *Wildlife and Fisheries Habitat Management.* Activities such as construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

Potential Tribal Connection

1. *Cultural Heritage.* Cultural heritage activities, as well as activities such as site monitoring, may be eligible in a specific State.

2. *Forestry Management.* Some of these activities may be eligible in specific States.

3. *Range Management.* Some of these activities may be eligible in a specific State.

4. *Riparian Management.* Some of these activities may be eligible in a specific State.

5. *Recreation Management.* Some of these activities may be eligible in a specific State.

6. *Wildlife and Fisheries Habitat Management.* Some of these activities may be eligible in a specific State.

For questions regarding Indian self-governance contact the BLM Self-Governance Coordinator, Dr. Marilyn Nickels, Washington Office, 1849 C Street NW., Washington, DC 20240, (202) 452-0330, fax: (202) 452-7701. General information on all contracts available in a given year through the BLM can be obtained from the BLM National Business Center, PO Box 25047, Bldg 50 Denver Federal Center, Denver, CO 80225-0047.

B. Eligible Programs of the Bureau of Reclamation

Reclamation operates a wide range of water resource management projects for hydroelectric power generation, municipal and industrial water

supplies, flood control, outdoor recreation, enhancement of fish and wildlife habitats, and research. Most of Reclamation's activities involve construction, operations and maintenance, and management of water resources projects and associated facilities. Components of the following Fiscal Year 1998 water resource management and construction projects may be eligible for self-governance annual funding agreements.

1. Wetlands Enhancement Project (Sac and Fox Nation Of Oklahoma)—OK.
2. Klamath Project—CA, OR.
3. Newlands Project—NV, CA.
4. Trinity River Restoration Program—CA.
5. Central Valley Project (Trinity Division)—CA.
6. Central Arizona Project—AZ, CA, NM, UT.
7. Colorado River Front Work/Levee System—AZ, CA, NV.
8. Lower Colorado Indian Water Management Study—AZ, CA, NV.
9. Middle Rio Grande Project—NM.
10. Washoe Project—NV, CA.
11. Yuma Area Projects—AZ, CA, NV.
12. Wild Horse Dam and Reservoir—NV.

13. Indian Water Rights Settlement Projects—as Congressionally authorized.

For questions regarding self-governance contact Dr. Barbara McDowell, Native American Affairs Office, Bureau of Reclamation (W-6100), 1849 C Street NW., Washington, DC 20240-0001, (202) 208-4733, fax: (202) 208-6688.

C. Eligible Programs of the Fish and Wildlife Service (FWS)

The mission of FWS is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. FWS has a continuing cooperative relationship with a number of Indian tribes through the National Wildlife Refuge System and the hatcheries program.

FWS will also discuss participation in any program with any Indian tribe, self-governance or non-self-governance. Any self-governance tribe may ask a wildlife refuge or fish hatchery directly about contracting under the Self-Governance Act.

Some elements of the following programs may be eligible for contracting under a self-governance annual funding agreement. The listing below was developed considering the proximity of an identified self-governance tribe to a national wildlife refuge or national fish

hatchery, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement.

Subsistence Programs Within Alaska

1. Fish and Wildlife Technical Assistance, Restoration and Conservation
 - a. Fish and wildlife population surveys.
 - b. Habitat surveys.
 - c. Sport fish restoration.
 - d. Feeding depredating migratory birds.
 - e. Fish and wildlife program planning.
 - f. Habitat restoration activities.
2. Endangered Species Program
 - a. Cooperative management of conservation programs.
 - b. Development of recovery plans.
 - c. Conducting status surveys for high priority candidate species.
 - d. Recovery plan implementation.
3. Education Programs
 - a. Interpretation.
 - b. Outdoor classrooms.
 - c. Visitor center operations.
 - d. Volunteer coordination efforts on and off-refuge.

4. Environmental Contaminants Program

- a. Analytical devices.
- b. Removal of underground storage tanks.
- c. Specific cleanup activities.
- d. Natural resource economic analysis.
- e. Specific field data gathering efforts.

5. Hatchery Operations

- a. Egg taking.
- b. Rearing/feeding.
- c. Disease treatment.
- d. Tagging.
- e. Clerical/facility maintenance.

6. Wetland and Habitat Conservation and Restoration

- a. Construction.
- b. Planning activities.
- c. Habitat monitoring and management.

7. Conservation Law Enforcement

- a. All law enforcement efforts under cross-deputization.

8. National Wildlife Refuge Operations and Maintenance

- a. Construction.
- b. Farming.
- c. Concessions.
- d. Maintenance.
- e. Comprehensive management planning.

- f. Biological program efforts.
- g. Habitat management.

Locations of Wildlife Refuges

1. Humboldt Bay National Wildlife Refuge—CA.
2. Kootenai National Wildlife Refuge—ID.
3. Agassiz National Wildlife Refuge—MN.
4. Rice Lake National Wildlife Refuge—MN.
5. Mille Lacs National Wildlife Refuge—MN.
6. Pablo National Wildlife Refuge—MT.
7. Ninepipe National Wildlife Refuge—MT.
8. National Bison Range—MT.
9. Sequoyah National Wildlife Refuge—OK.
10. Tishomingo National Wildlife Refuge—OK.
11. Bandon Marsh National Wildlife Refuge—OR.
12. San Juan Islands National Wildlife Refuge—WA.
13. Dungeness National Wildlife Refuge—WA.
14. Nisqually National Wildlife Refuge—WA.
15. Alaska National Wildlife Refuge—AK.
16. Mescalero National Fish Hatchery—NM.
17. Alchesay National Fish Hatchery—AZ.
18. Quinault National Fish Hatchery—WA.
19. Makah National Fish Hatchery—WA.

For questions regarding self-governance contact Duncan Brown, Native American Liaison, Fish and Wildlife Service (MS3012), 1849 C Street NW, Washington, D.C. 20240-0001, (202) 208-4133, fax: (202) 208-7407.

D. Eligible Programs of the Minerals Management Service (MMS)

MMS provides responsible stewardship of America's offshore resources and collects revenues generated from mineral leases on Federal and Indian lands. MMS is responsible for the management of the Federal Outer Continental Shelf, which are submerged lands off the coasts that have significant energy and mineral resources. MMS also offers mineral-owning tribes other opportunities to become involved in MMS's Royalty Management Program functions. These programs address the intent of Indian self-governance but are available regardless of self-governance intentions or status and are a good prerequisite for assuming other technical functions.

Within the offshore minerals management program, environmental impact assessments and statements, and environmental studies, may be available if a self-governance tribe demonstrates a special geographic, cultural, or historical connection. Generally, royalty management programs are available to tribes because of their status as Indians. Royalty management programs that may be available to self-governance tribes are as follows.

1. *Audit of tribal royalty payments.* Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in MMS delegated audits, this program is offered as an optional alternative.)

2. *Verification of tribal royalty payments.* Financial compliance verification and monitoring activities, production verification, and appeals research and analysis.

3. *Tribal royalty reporting, accounting and data management.* Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. *Tribal royalty valuation.* Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

5. *Royalty Management of Allottee Leases.* Royalty management of allottee leases.

6. *Online monitoring of royalties and accounts.* Online computer access to reports, payments, and royalty information contained in MMS accounts. MMS will install equipment at tribal locations, train tribal staff, and assist tribe in researching and monitoring all payments, reports, accounts, and historical information regarding their leases.

7. *Royalty Internship Program.* A new orientation and training program for auditors and accountants from mineral producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance agreement but have not yet acquired mineral revenue expertise via a FOGDMA section 202 contract.

For questions regarding self-governance contact Joan Killgore, Royalty Liaison Office, Minerals Management Service, 1849 C Street NW, Room 4241, Washington, D.C. 20240-0001, (202) 208-3512, fax (202) 208-3982.

E. Eligible Programs of the National Park Service (NPS)

The National Park Service administers the National Park System made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. NPS maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, interpretation of geology, history, and natural and cultural resources. Some elements of these programs may be eligible for contracting under a self-governance annual funding agreement. The following list was developed considering the geographic proximity to, and/or traditional association of a self-governance tribe with, units of the National Park system, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement.

1. *Programs otherwise available (ongoing programs and activities).* Components of the programs on the following list are potentially eligible for inclusion in a self-governance annual funding agreement. Programs may be available within units of the National Park System.

- a. Archaeological surveys.
- b. Comprehensive management planning.
- c. Cultural resource management projects.
- d. Ethnographic studies.
- e. Erosion control.
- f. Fire protection.
- g. Hazardous fuel reduction.
- h. Housing construction and rehabilitation.
- i. Gathering baseline subsistence data—AK.
- j. Janitorial services.
- k. Maintenance.
- l. Natural resource management projects.
- m. Range assessment—AK.
- n. Reindeer grazing—AK.
- o. Road repair.
- p. Solid waste collection and disposal.
- q. Trail rehabilitation.

2. *Programs having a potential tribal connection (special programs).* Aspects of these programs may be available if a self-governance tribe demonstrates a geographical, cultural, or historical connection.

- a. Beringia Research.
- b. Elwha River Restoration.

3. *Locations of Programs.* Aspects of the ongoing programs and activities may be available at the park units with known geographic, cultural, or historical connections with a self-governance tribe.

- a. Lake Clark National Park and Preserve—AK.
- b. Katmai National Park and Preserve—AK.
- c. Glacier Bay National Park and Preserve—AK.
- d. Sitka National Historical Park—AK.
- e. Kenai Fjords National Park—AK.
- f. Wrangell-St. Elias National Park & Preserve—AK.
- g. Bering Land Bridge National Park—AK.
- h. Northwest Alaska Areas—AK.
- i. Gates of the Arctic National Park & Preserve—AK.
- j. Yukon Charlie Rivers National Preserve—AK.
- k. Casa Grande Ruins National Monument—AZ.
- l. Joshua Tree National Park—CA.
- m. Redwoods National Park—CA.
- n. Whiskeytown National Recreation Area—CA.
- o. Hagerman Fossil Beds National Monument—ID.
- p. Sleeping Bear Dunes National Lakeshore—MI.
- q. Voyageurs National Park—MI.
- r. Grand Portage National Monument—MN.
- s. Bear Paw Battlefield, Nez Perce National Historical Park—MT.
- t. Glacier National Park—MT.
- u. Great Basin National Park—NV.
- v. Bandelier National Monument—NM.
- w. Hopewell Culture National Historical Park—OK.
- x. Chickasaw National Recreation Area—OK.
- y. Effigy Mounds National Monument—IA.
- z. Olympic National Park—WA.
- a-1. San Juan Islands National Historic Park—WA.
- b-1. Mt. Rainier National Park—WA.
- c-1. Ebey's Landing National Historical Reserve—WA.

While NPS has tried to indicate the types of programs that may be available, this is not intended to be an all-inclusive listing. NPS will also discuss participation in any program with an Indian tribe, self-governance or non-self-governance.

For questions regarding self-governance contact Dr. Patricia Parker, American Indian Liaison Office, National Park Service (2205), PO Box 37127, Washington, D.C. 20013-7127; telephone (202) 208-5475, fax (202) 273-0870.

F. Eligible Programs of the Office of Surface Mining (OSM)

OSM regulates surface coal mining and reclamation operations, and reclaims abandoned coal mines, in cooperation with States and Indian tribes.

1. *Abandoned Mine land Reclamation Program.* This program to restore eligible lands mined and abandoned or left inadequately restored is available to Indian tribes.

2. *Control of the Environmental Impacts of Surface Coal Mining.* This program includes analyses, NEPA documentation, technical reviews, and studies. Where surface coal mining exists on Indian land, certain regulatory activities that are not inherently Federal, including, for example, designation of areas unsuitable for mining, are available to Indian tribes.

For questions regarding self-governance contact Maria Mitchell, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., (MS-210-SIB), Washington, DC 20240, telephone (202) 208-2865, fax (202) 291-3111.

G. Eligible Programs of the U.S. Geological Survey (USGS)

The mission of the U.S. Geological Survey is to provide information on biology, geology, hydrology, and cartography that contributes to the wise management of the nation's natural resources and to the health, safety, and well-being of the American people. Information includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure and dynamic processes of the earth. Information on these scientific issues is developed through extensive research, field studies, and comprehensive data collection to: Evaluate natural hazards such as earthquakes, volcanoes, landslides, floods, droughts, subsidence and other ground failures; assess energy, mineral, and water resources in terms of their quality, quantity, and availability; evaluate the habitats of animals and plants; and produce geographic, cartographic, and remotely-sensed information in digital and non-digital formats. No USGS programs are specifically available to American Indians or Alaska Natives. Components of programs may have a special geographic, cultural, or historical connection with a tribe.

1. *Mineral, Environmental, and Energy Assessments.* Components of this program that involve geologic research, data acquisition, and predictive modeling may be available for inclusion in an annual funding agreement.

2. *USGS Earthquake Hazards Reduction Programs.* Components of this program that involves research, data acquisition, and modeling related to earthquakes and seismically active areas

may be available for inclusion in an annual funding agreement.

3. *Water Resources Data Collection and Investigations.* Components of this program may be available for inclusion in an annual funding agreement if a self-governance tribe demonstrates a special geographic, cultural, or historical connection.

4. *Biological Resources Inventory, Monitoring, Research and Information Transfer Activities.* Components of this program may be available for inclusion in an annual funding agreement if a self-governance tribe demonstrates a special geographic, cultural or historical connection.

For questions regarding self-governance contact Sue Marcus, American Indian/Alaska Native Liaison, U.S. Geological Survey, 105 National Center, Reston, VA 20192, telephone (703) 648-4437, fax (703) 648-5068.

IV. Programmatic Targets

Each of the non-BIA bureaus will successfully negotiate at least one annual funding agreement with a self-governance tribe for implementation in Fiscal Year 1998.

Dated: April 23, 1997.

Juliette Falkner,

Special Assistant to the Secretary.

[FR Doc. 97-10940 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

The Iowa Tribe of Oklahoma Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 USC § 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 US 713 (1983). I certify that the Iowa Tribe of Oklahoma Liquor Ordinance was duly adopted by Ordinance Iowa No. 93-02 of the Iowa Tribe of Oklahoma on June 5, 1993. The ordinance provides for the regulation, sale, possession and use of alcoholic liquor and beer within the Tribe's jurisdiction.

DATES: Notwithstanding the provisions of Section 28, this ordinance is effective as of June 29, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Cordova, Office of Tribal Services, 1849 C Street, NW, MS 4641 MIB, Washington, DC 20240-4001; telephone (202) 208-4401.

SUPPLEMENTARY INFORMATION: The Iowa Tribe of Oklahoma Liquor Ordinance is to read as follows:

Iowa Tribe of Oklahoma

Liquor Act of 1989

Be it Enacted by the Iowa Tribe of Oklahoma:

Repealed Law: The Iowa Tribe of Oklahoma Liquor Act, adopted by I-89-47, August 22, 1989, repealed by I-90-19, January 3, 1990.

Section 1. Title and Purpose

This Act shall be known as the Iowa Tribe of Oklahoma Liquor Act of 1989. This Act is enacted to regulate the sale and distribution of liquor and beer products within the Tribal jurisdiction of the Iowa Tribe of Oklahoma, and to generate revenue to fund needed tribal programs and services.

Section 2. Definitions

Unless otherwise required by the context the following words and phrases shall have the designated meanings:

(A) "Tribe" shall mean the Iowa Tribe of Oklahoma, Rural Route 721, Perkins, Oklahoma 74059.

(B) "Business Committee" shall mean the Iowa Tribe of Oklahoma Business Committee as constituted by Article V of the Constitution and By-Laws of the Iowa Tribe of Oklahoma.

(C) "Tribal Jurisdiction" shall mean:

(1) All land within the limits of the Iowa Tribe of Oklahoma under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of ways running through the reservation;

(2) All dependant Iowa Tribe of Oklahoma communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state and;

(3) All Iowa Tribe of Oklahoma Indian Allotments, the Indian titles to which have not been extinguished, including rights of ways running through the same.

(D) "Member" shall mean any person whose name appears on the official roll of the Iowa Tribe of Oklahoma.

(E) "Commercial Sale" shall mean the transfer, exchange or barter, in any or by any means whatsoever for a consideration by any person, association, partnership, or corporation of liquor and beer products.

(F) "Wholesale Price" shall mean the established price for which liquor and beer products are sold to the Iowa Tribe of Oklahoma or any licensed operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(G) "Alcohol" is the substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation of distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(H) "Beer" means any beverage obtained by the alcohol fermentation of an infusion or decoction of pure hop, or pure extract of hops, and malt sugar in pure water containing not more than 6% of alcohol by weight.

(I) "Liquor Outlet" shall mean either:

(1) A tribally licensed retail sale or wholesale business selling liquor or beer within the tribal jurisdiction, or

(2) A tribally licensed commercial establishment selling liquor or beer for consumption within tribal jurisdiction. For purposes of this Act, "Outlet", "Liquor Outlet" and "Liquor and Beer Outlet" shall be deemed to have the same meaning and a reference to one shall be deemed a reference to and inclusion of the others.

(J) "Operator" shall mean all enrolled members of twenty-one (21) years of age or older, of the Iowa Tribe of Oklahoma or enrolled members of twenty-one (21) years of age or older, of another federally recognized Tribe of American Indians licensed by the Iowa Tribe of Oklahoma, or any designated agent of twenty-one (21) years of age, or older, of any corporation chartered or domesticated pursuant to the Iowa Corporation Act, to operate either a retail, wholesale or commercial liquor and beer outlet, or any combination thereof.

Section 3. Licensing of Liquor and Beer Outlets

The Iowa Tribe of Oklahoma Business Committee shall be the Iowa Tribe of Oklahoma Liquor and Beer Control Commission. The Commission is empowered to:

(A) Administer these regulations by exercising general control, management and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purpose of these regulations.

(B) Adopt and enforce rules and regulations in furtherance of the purpose of these regulations and in the performance of its administrative functions.

Section 4. Nature of Outlet

Each liquor and beer outlet, licensed granted by the Commission, hereunder, shall be managed pursuant to the conditions herein set out, and as adopted pursuant to Section 3, subparagraph B, of this law.

Section 5. Application For Liquor and Beer Outlet License

Any enrolled member, twenty-one years of age and older, of the Iowa Tribe of Oklahoma or an enrolled member, twenty-one (21) years of age or older, of a federally recognized Tribe or any designated agent twenty-one (21) years of age or older, of any corporation chartered or domesticated pursuant to the Iowa Corporation Act may apply to the Commission for a liquor and beer outlet license.

Section 6. Corporations

Any corporation chartered or domesticated pursuant to the Iowa Corporation Act may apply to the Commission for a liquor and beer outlet license.

Section 7. Processing of Application

The Tribal Secretary-Treasurer or other representative authorized by the Commission shall receive and process applications and be the official representative of the Tribe and Commission in matters relating to liquor and beer excise tax collections and related matters. The Commission or its authorized representative shall obtain additional information as deemed appropriate. If the Commission or its authorized representative is satisfied that the applicant is a suitable and respectable person, the Commission or its authorized representative may issue a license for the sale of liquor and beer products.

Section 8. Application Fee

Each application shall be accomplished by an application fee of twenty-five dollars (\$25.00).

Section 9. Liquor and Beer License

Upon approval of an application, the Commission shall issue the applicant a liquor and beer outlet license, for one year from the date of issuance, which shall entitle the operator to establish and maintain only the type outlet being permitted. This license shall not be transferable. It shall be renewable at the discretion of the Commission upon submission of the licensee of the application form required in Section 5 and payment of the application fee required in Section 8.

Section 10. Non-Indian License

(RESERVED)

Section 11. Regarding Sales By Liquor Wholesales and Transport of Liquors Within the Tribal Jurisdiction

The operator of any licensed outlet shall keep the Commission informed in writing of the identity of suppliers and/or wholesalers who supply or are expected to supply liquor stocks to the outlet(s). The Commission may, at its discretion, for any reasonable cause, limit or prohibit the purchase of said stock from a supplier or wholesaler.

Section 12. Freedom of Information From Suppliers

Operators shall, in their purchase of stock and in their business relations with suppliers, cooperate with and assist the free flow of information and data to the Commission from suppliers relating to the sales and business arrangements between the suppliers and operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the operators.

Section 13. Sales By Retail, Wholesale and Commercial Operators

(A) The Commission shall adopt procedures which shall supplement these Regulations and facilitate their enforcement. These procedures shall include limitations on sales to minors, where liquor may be consumed, persons not allowed to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

(B) No tribal operator shall give, sell, or otherwise supply liquor to any person under twenty-one (21) years of age either for his or her own use or for the use of his or her parents or for the use of any other person.

(C) No tribally licensed retail or wholesale operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto and in his or her control; provided, the Commission may identify specific locations within Tribal jurisdiction where beer and/or alcohol may be consumed.

(D) A tribally licensed commercial operator may permit persons to open and consume liquor and beer on his or her licensed premises; provided, the operator may not permit persons to open and consume liquor and beer on any premises adjacent thereto and under the control of the operator.

Section 14. Conduct on Licensed Premises

Conduct prohibited on licensed premises shall be in accordance with the laws of the State of Oklahoma and the laws of the Iowa Tribe of Oklahoma. Jurisdiction over such conduct is reserved to and exercised by the Iowa Tribe of Oklahoma. Jurisdiction over such conduct is reserved to and exercised by the Iowa Tribe of Oklahoma.

Section 15. Employment of Minors

No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis, except as otherwise provided herein. Employees eighteen (18) years or older may sell or handle beer or wine provided that there is direct supervision by an adult twenty-one (21) years of age or older.

Section 16. Operator's Premises Open to Commission Inspection

The premises of all operators, including vehicles used in connection with liquor sales, shall be open at all times to inspection by the Iowa Tribe of Oklahoma, Liquor and Beer Control Commission or its designated representative.

Section 17. Operator's Records

The original or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor by operators shall be kept on file in the retail premises of the operator purchasing the same for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All canceled checks, bank statements and books of accounting covering or involving the purchase of liquor, and all memoranda, if any, showing payment of money for liquor other than by check, shall be likewise preserved for availability for inspection and checking.

Section 18. Records Confidential

All records of the Iowa Tribe of Oklahoma Liquor and Beer Control Commission showing purchase of liquor by an individual or group shall be confidential and shall not be inspected except by members of the Commission or the Commission's authorized representative.

Section 19. Conformity With State Law

Operators shall operate the outlets in conformity with both the laws of the State of Oklahoma and this Act as required by 18 U.S.C. 1161.

Section 20. Tribal Excise Tax Imposed Upon Distribution of Liquor

(A) The Commission shall by resolution include a provision for the taxing of sales of liquor and beer products to the consumer or purchaser. Such tax shall be in amounts equal to at least 5% of all retail sales prices, but the Commission may establish tax rates in excess of that 5% for any given class of merchandise.

(B) The excise tax levied hereunder shall be added to the retail selling price of liquor and beer products sold to the ultimate consumer.

Section 21. Liability for Bills

The Tribe shall have no legal responsibility for any unpaid bills owed by a liquor and beer outlet to a wholesale supplier or any other person.

Section 22. Other Business by Operator

An operator may conduct another business simultaneously with managing liquor and beer outlet; provided, such other business must be approved prior to initiation by majority vote of the Iowa Tribe of Oklahoma Business Committee. Said other business may be conducted on the same premises as a liquor and beer outlet, but the operator shall be required to maintain separate books of account for the other business.

Section 23. Tribal Liability and Credit

(A) Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Tribe or the Commission authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The operator shall hold the Iowa Tribe of Oklahoma harmless from all claims and liability of whatever nature. The Commission shall revoke an operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

(B) The operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurable risks. The Commission or the Business Committee may establish, as a condition of any license, the required insurance limits

and any additional coverages deemed advisable.

Section 24. Audit and Inspection

(A) All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative for any reasonable time.

(B) The excise tax together with reports on forms to be supplied by the Commission shall be remitted to the Tribal office monthly unless otherwise specified in writing by the Commission. The operator shall furnish a satisfactory bond to the Tribe in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

Section 25. Revocation of Operator's License

Failure of an operator to abide by the provision of these regulations and any additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the operator's license as well as enforcement of the penalties provided in Section 26.

Section 26. Violation—Penalties

Any Indian violating these Regulations shall be guilty of an offense and subject to a fine of not less than fifty dollars (\$50.00) and not to exceed a maximum of two hundred-fifty dollars (\$250.00). Any operator who violates the provisions set forth herein shall forfeit all of the remaining stock in outlet(s). The Tribe shall be empowered to seize forfeited products.

Section 27. Separability

If any provision of the Regulations in its application to any person or circumstance is held invalid, the remainder of the Regulations and their application to other persons or circumstances is not affected.

Section 28. Effective date

This Act shall become effective January 3, 1990, by Resolution I 90-19, as amended October 12, 1990, by Resolution I-92-02; May 22, 1991 by Resolution I-91-28; and General Council Ratification by Ordinance Iowa No. 93-02, June 5, 1993.

Dated: April 21, 1997

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97-10917 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[WO-300-1990-00]****Intent to Prepare an Environmental Impact Statement for the Revision of the Surface Management Regulations—43 CFR 3809 for Operations Under the Mining Law of 1872, as Amended****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of intent and scoping, amendment.

SUMMARY: This notice amends the Bureau of Land Management's (BLM) April 4, 1997 notice announcing its intent to prepare an Environmental Impact Statement for the proposed revision of its regulations governing mining operations under the general mining laws and inviting the public to submit comments and suggestions on the scope of the rulemaking and analysis. The amendment informs the public that we have scheduled two additional scoping meetings in San Francisco, California.

DATES: BLM will hold the scoping meetings on May 28, 1997 from 2:00 to 4:00 p.m. and 7:00 to 9:00 p.m. local time.

ADDRESSES: BLM will hold the scoping meetings at the Holiday Inn, 1300 Columbus Avenue, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Paul McNutt, (702) 785-6604 or via e-mail: pmcnutt@nv.blm.gov. An alternate contact is Scott Haight, (406) 538-7461 or via e-mail: shaight@mt1353.lido.mt.blm.gov. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: On April 4, 1997, BLM announced that it will prepare an environmental impact statement for the proposed revision of its regulations governing mining operations under the general mining laws. See 62 FR 16177. The notice invited comments and suggestions on the scope of the rulemaking and analysis and informed the public that BLM will hold public meetings in seven cities during May 1997 to facilitate the public comment process.

BLM has received a request to schedule additional public scoping

meetings in San Francisco, California. We have scheduled two additional public meetings on May 28, 1997, at the Holiday Inn, 1300 Columbus Avenue, San Francisco. The afternoon meeting will take place from 2:00 p.m. to 4:00 p.m.; the evening meeting will take place from 7:00 p.m. to 9:00 p.m. See the April 4 notice for information about the other public scoping meetings and public comment procedures (62 FR 16178).

The meeting site for the public scoping meetings is accessible to individuals with disabilities. An individual with a disability who needs an accommodation to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in alternative format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although BLM will attempt to meet a request received after this date, the requested accommodation may not be available.

Dated: April 23, 1997.

Bob Armstrong

Assistant Secretary for Land and Minerals Management.

[FR Doc. 97-10930 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[CA-060-07-1990-00]****Meeting of the California Desert District Advisory Council**

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management (BLM), US Department of the Interior, will meet in formal session on Friday, May 30 from 8 a.m. to 4:30 p.m. and Saturday, May 11, 1997, from 8 a.m. to 12 noon. The meeting will be held in the Barstow Holiday Inn located at 1511 East Main Street, Barstow, California. Agenda topics will include discussions on the Army's proposal to expand the National Training Center at Fort Irwin, California, and BLM's recreation fee pilot program. Members of the public are encouraged to attend and participate.

The council will take part in a helicopter tour of Fort Irwin, the Navy's adjacent Mojave B Range, and the public lands within the proposed expansion areas on May 29. The tour, which is not open to the public because of space limitations, will allow council members

to gather information about the expansion proposals which they will discuss during the May 30-31 public meeting.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714; (909) 697-5215.

Dated: April 23, 1997.

Jo Simpson,

Assistant District Manager, External Affairs.
[FR Doc. 97-10969 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[NV-010-2811-01]****Carson City District Fire Management Plan Amendment; Notice of Intent To Prepare a Plan Amendment and Environmental Analysis and Invitation for Public Participation; Correction**

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 97-8865 appearing on page 16869 in the issue of Tuesday, April 8, 1997 in the third column in the first sentence of the **DATES AND ADDRESSES** section the date "May 6, 1997" should read "May 8, 1997."

Dated: April 23, 1997.

John Singlaub,

District Manager, Carson City District.

[FR Doc. 97-10968 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[MT-924-1430-01; MTM 83585]

Cancellation of Proposed Withdrawal in Aid of Legislation; Montana**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal of 19,764.74 acres of public lands requested by the Bureau of Land Management for protection of the unique resources within the Sweet Grass Hills Area of Critical Environmental Concern and other adjoining land areas. The lands will remain closed to mining by an overlapping withdrawal. The lands have been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: May 29, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2949.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** (60FR38852) July 28, 1995, which segregated the lands described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from the general land laws or the mineral leasing laws. The Bureau of Land Management has determined that withdrawal of the lands in aid of legislation will not be needed and has canceled its application.

At 9 a.m. on May 29, 1997, the proposed withdrawal will be terminated and the lands will be relieved of the segregative effect of the above-referenced application.

Dated: April 15, 1997.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 97-11047 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-DN-P

INTERNATIONAL TRADE COMMISSION

[Investigation 332-381]

The Impact of the North American Free Trade Agreement on the U.S. Economy and Industries: A Three Year Review**AGENCY:** United States International Trade Commission.**ACTION:** Institution of investigation and scheduling of public hearing.**EFFECTIVE DATE:** April 25, 1997.

SUMMARY: Following receipt on April 23, 1997, of a request from the Office of the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332-381, *The Impact of the North American Free Trade Agreement on the U.S. Economy and Industries: A Three Year Review*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Information on economic aspects of the investigation may be obtained from Kyle Johnson, Office of Economics (202-205-3229), Hugh Arce, Office of Economics (202-205-3234), or William Donnelly, Office of Economics (202-205-3223), and on legal aspects, from William Gearhart, Office of the General Counsel (202-205-3091). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810).

Background

The USTR's letter requesting the investigation was received on April 23, 1997. The letter notes that section 512 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3462) requires the President to provide to the Congress by July 1, 1997, a comprehensive study of the operation and effects of the NAFTA during its first 3 years. The letter states that the Commission's investigation and report are to serve as a resource which the Administration can draw upon in preparing its report to the Congress.

As requested by USTR, the Commission in its report on the investigation will provide (1) a literature review and analysis of existing studies that have assessed the impact on the United States of NAFTA in its 2 first 3 years; (2) a discussion of the technical issues involved in formal economic assessment of the impact of a partially implemented free trade agreement, while considering other non-agreement factors affecting trade flows during the same period; and (3), to the extent possible, an analysis of the aggregate effects on the economy of the Agreement in its first 3 years.

As requested, the Commission in its analysis of the impact of NAFTA on U.S. trade with NAFTA partners will use formal empirical methods, as well as the industry expertise maintained by the Commission. It will consider relevant micro- and macro-economic factors, such as exchange-rate fluctuations (including the effects of the peso crisis), economic growth, and other

agreements, including the U.S.-Canada Free Trade Agreement and the phase in of Uruguay Round commitments, that affected the U.S. economy, so as to isolate those effects, to the extent feasible, from the factors that relate specifically to the NAFTA.

As requested, the Commission will examine for NAFTA effects the U.S. industries in which U.S. exports to Mexico or Canada or imports into the United States from Mexico or Canada have increased significantly. The Commission will also examine, in addition to trade effects, changes in wages, employment, productivity, and investment that occurred as a result of NAFTA, and changes in U.S. trade with third countries induced by NAFTA. In assessing these factors, the Commission will, to the extent possible, attempt to distinguish between the consequences of NAFTA and events that likely would have occurred without the Agreement, and will consider NAFTA effects in the context of the overall performance of the U.S. industries analyzed.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission hearing room, 500 E Street, SW, Washington, D.C. 20436, beginning at 9:30 a.m. on May 15, 1997, and continuing on May 16 if an additional day is needed. All persons have the right to appear by counsel or in person to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, D.C. no later than noon, May 9, 1997. Hearing statements should be filed not later than COB May 12, 1997. Any posthearing submissions must be filed not later than COB May 22, 1997.

In the event that, as of noon on May 9, 1997, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205-1816) after May 12, 1997, to determine whether the hearing will be held.

Written Submissions

Interested persons are invited to submit written statements (one original and 14 copies) concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally,

submission of separate confidential and public versions of the submission would be appropriate.) All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested persons. To be assured of submission to USTR with the report, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than May 22, 1997. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Issued: April 25, 1997

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 97-11181 Filed 4-25-97; 1:29 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Auto Body Consortium, Inc.; Intelligent Resistance Welding Joint Venture

Notice is hereby given that, on March 17, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Auto Body Consortium, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lobdell-Emery Manufacturing Company, Alma, MI has withdrawn from the joint venture; and RoMan Manufacturing, Inc., Grand Rapids, MI has joined the joint venture.

No other changes have been made in either the membership or planned activity of the joint venture.

On September 18, 1995, the Consortium filed its original notification

pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1996 (61 FR 14817). The last notification was filed on September 23, 1996. A notice was published in the **Federal Register** on November 5, 1996 (61 FR 569970).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-10952 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CAD Framework Initiative, Inc.

Notice is hereby given that, on November 7, 1996 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Compass Design Automation; and Hughes Aircraft Company have not renewed their Corporate Memberships in CFI.

On December 30, 1988, CFI filed its original notification pursuant to Section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction notice was published on April 20, 1989 (54 FR 16013).

The last notification was filed with the Department on June 3, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 5, 1996 (61 FR 569970).

Constance K. Robinson,

Director of Operations.

[FR Doc. 97-10945 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on March 17, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium, ("CommerceNet") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined CommerceNet as Sponsor Members: NOVUS Services, Riverwoods, IL; Mitsubishi Electric Corporation, Tokyo, JAPAN. NCR, West Columbia, SC has upgraded its membership form Associate to Sponsor Member.

The following organizations have joined CommerceNet as Associate Members: Firefly Creations, Palo Alto, CA; LittleNet, LLC, Lowell, MA; St. Paul Software, St. Paul, MN; Unix System Laboratories de Mexico, S.A. de V.C., Mexico City, DF, MEXICO; Information Technology Association of America ("ITAA"), Arlington, VA; Giga Information Group, Cambridge, MA; G2 Research, Inc., Mountain View, CA; Nielsen Media Research, New York, NY; NetConsult Communications, Burlingame, CA; DynamicWeb, Fairfield, NJ; Primas, Inc., Palo Alto, CA; Time Warner, New York, NY; Nikko System Center LTD, Los Altos, CA; DBM Group, Division of Poppe Tyson, Palo Alto, CA; and OneSite Solution, Minneapolis, MN.

No other changes have been made in either the membership or planned activities of CommerceNet. Membership remains open and CommerceNet intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, CommerceNet filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on December 16, 1996. A notice was published in the **Federal**

Register on March 7, 1997 (62 FR 10584).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-10948 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Consortium for Non-Contact Gauging

Notice is hereby given that, on March 17, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Consortium for Non-Contact Gauging ("CNCG") have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in project membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CyberOptics Corporation, Minneapolis, MN, has terminated its membership.

No other changes have been made in either the membership or the planned activities of the Consortium.

On March 7, 1995, CNCG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 24, 1995 (60 FR 27559).

The last notification was filed with the Department on February 21, 1996. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 3, 1996 (61 FR 14817).

Participation in this group research project remains open, and CNCG intends to file additional written notification disclosing all changes in membership. Information regarding participation in the project may be obtained from Eileen Pickett, Ohio Aerospace Institute, Cleveland, OH.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-10951 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Label Alliance (DLA)—Study of Digital Printing and Packaging Technology

Notice is hereby given that, on December 30, 1996 pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DLA has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: Blue Ribbon Tag & Label Corp., Hollywood, FL; Didde Technology Corp., Overland Park, KS; The John Henry Company, Lansing, MI; Los Angeles Label Co., Commerce, California; Olympic Packaging Corp., Winston-Salem, NC; Scranton Label Inc., Clarks Summit, PA; Wallace Computer Services, Inc., Bellwood, IL; Bural Limited, Cambridge, UK; Jarvis Porter Group, PLC, Leeds, UK; CCL Industries, Inc., Willowdale, Ontario, Canada; Hammer Lithograph Corp., Rochester, NY; Label America, Inc., Stone Mountain, GA; The Miner Group Ltd., Minneapolis, Minnesota; Phenix Label Company, Inc., Olathe, KS; Topflight Corp., York, PA; Wisconsin Label Corp., Algoma, Wisconsin; Floraprint International Ltd., Liechtenstein; and TH Stralfors AB, Langgatan, Sweden. The nature and objectives of the joint venture are to promote analysis and experimentation of digital printing and packaging and to apply such findings to the creation of new products and services.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-10947 Filed 4-29-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Fuel Cell Cooperative Research Program

Notice is hereby given that, on March 24, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Fuel Cell Cooperative Research Program have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the current participants in the Fuel Cell Cooperative Research Program are: Delphi Energy and Engine Management Systems Division of General Motors Corporation, Flint, MI; Arco Products Company, Anaheim, CA; and Exxon Research & Engineering Company, Florham Park, NJ.

In consideration of recent legislative and regulatory actions designed to reduce emissions from motor vehicles in order to improve air quality, the nature and objective of this joint research and development venture is to explore the option of using a fuel cell as an automotive power source. To help speed the research and reduce the expense in this area, the parties have agreed to establish a Fuel Cell Cooperative Research Program. Through the Program, the parties will plan and carry out research and tests designed to measure and evaluate the use of one or more liquid hydrocarbons as a hydrogen fuel source for an automotive fuel cell and develop a fuel processor technology required to utilize such liquid hydrocarbons to produce such hydrogen fuel. The parties plan to perform acts allowed by the National Cooperative Research and production Act that would advance these goals.

Information regarding participation in the Fuel Cell Cooperative Research Program may be obtained from Mr. Steven J. Cernak, Esq., General Motors Corporation, Detroit, MI 48232.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-10946 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (NCMS)

Notice is hereby given that, on March 3, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the participants in a joint venture identified as "Rapid Response Manufacturing." The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Structural Dynamics Research Corporation, Milford, OH, has been added as participant in the joint venture.

No other changes have been made in the joint venture, and its nature and objectives remain unchanged. NCMS intends to file additional written notification disclosing all changes in the joint venture.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on February 26, 1997. This notice has not been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-10950 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Industrial Information Infrastructure Protocols Solutions for Manufacturing—Adaptable Replicable Technology

Notice is hereby given that, on March 21, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Industrial Information Infrastructure Protocols Solutions for Manufacturing—

Adaptable Replicable Technology ("NIIP-SMART") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organization has joined NIIP-SMART: Pilot Industries, Inc. The following organizations have withdrawn their membership from NIIP-SMART: Consilium; General Motors Corporation; and Promis.

No other changes have been made in either the membership or planned activities of NIIP-SMART. Membership remains open and NIIP-SMART intends to file additional written notifications disclosing all changes in membership.

On May 1, 1996, NIIP-SMART filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 1996 (61 FR 30098).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97-10949 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 12, 1997, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration (DEA) for registration by letter as a bulk manufacturer of the Schedule II controlled substance methylphenidate (1724).

The firm plans to manufacture methylphenidate for clinical trials, formulation studies, and product research and development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement

Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 30, 1997.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97-11036 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 29, 1997, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 4-Methoxyamphetamine (7411).

The firm plans to manufacture 4-methoxyamphetamine which is used as an intermediate in the manufacture of a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 30, 1997.

Dated: April 8, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97-11037 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Samuel Wise Chang, M.D.; Revocation of Registration

On October 24, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order

to Show Cause to Samuel Wise Chang, M.D., of Alexandria, Virginia, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AC5597262, under 21 U.S.C. 824 (a)(3) and (a)(4), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for reason that he is not authorized to handle controlled substances in the Commonwealth of Virginia, and his continued registration would be inconsistent with the public interest. The Order to Show Cause specifically alleged that:

"(1) In December 1993, a confidential informant informed the Alexandria (Virginia) police Vice Narcotics Section that (Dr. Chang) routinely dispensed and/or prescribed controlled substances for no legitimate medical purpose. In response to this information, law enforcement agents and confidential informants made 24 undercover visits to (Dr. Chang's) office between November 1993 and June 1994. On each occasion, (Dr. Chang) dispensed and/or prescribed controlled substances to these individuals for no legitimate medical purpose.

"(2) On February 6, 1995, (Dr. Chang was) indicted in the Circuit Court for the City of Alexandria, and charged with 24 counts of illegal distribution and/or prescribing of controlled substances in violation of Title 18 of the Virginia State Code.

"(3) On June 7, 1995, (Dr. Chang was) found guilty of 15 felony counts of illegal distribution of anabolic steroids and seven misdemeanor counts of unlawful prescribing of controlled substances. (Dr. Chang was) sentenced to one month confinement on each felony count with a fine of \$10,000 per count, and (Dr. Chang was) further fined \$2,000 on each misdemeanor count. The matter is currently on appeal.

"(4) On October 26, 1995, the Virginia Department of Health Professions ordered the suspension of (his) license to practice medicine. Therefore, (he is) not currently authorized to handle controlled substances in the Commonwealth of Virginia."

The Order to Show Cause also notified Dr. Chang that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that Dr. Chang received the order on November 4, 1996. No request for a hearing or any other reply was received by the DEA from Dr. Chang or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1)

30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Chang is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that on October 26, 1995, the Virginia Department of Health Professions suspended Dr. Chang's license to practice medicine in the Commonwealth of Virginia based upon the fact that Dr. Chang was convicted of 15 felony counts of distribution of stimulants. A letter to the DEA from the Virginia Department of Health Professions dated October 3, 1996, indicates that Dr. Chang has not sought reinstatement of his license to practice medicine and it therefore remains suspended. The Acting Deputy Administrator finds that since Dr. Chang is not currently authorized to practice medicine in the Commonwealth of Virginia, it is reasonable to infer that he is not authorized to handle controlled substances in that state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perex, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green M.D.*, 61 FR 60,728 (1996); *Eominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here, it is clear that Dr. Chang is not currently authorized to handle controlled substances in the Commonwealth of Virginia, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because Dr. Chang is not entitled to a DEA registration in Virginia due to his lack of state authorization to handle controlled substances, the Acting Deputy Administrator concludes that it is unnecessary to address whether Dr. Chang's continued registration would be inconsistent with the public interest, as alleged in the Order to Show Cause.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AC 5597262, previously issued to Samuel Wise Chang, M.D., be,

and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective May 29, 1997.

Dated: April 21, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97-10915 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Harvey Robert Spar, M.D.; Revocation of Registration

On July 30, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harvey Robert Spar, M.D., of Camarillo, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AS1871486, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Spar that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received by Dr. Spar on August 5, 1996. No request for a hearing or any other reply was received by the DEA from Dr. Spar or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for hearing having been received, concludes that Dr. Spar is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that by a Decision dated August 23, 1995, the Medical Board of California adopted a Stipulation for surrender of License signed by Dr. Spar on July 7, 1995, whereby Dr. Spar agreed to surrender his license to practice medicine in the State of California. The Acting Deputy Administrator finds that in light of the fact that Dr. Spar is not currently

licensed to practice medicine in the State of California, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Spar is not currently authorized to handle controlled substances in the State of California. Therefore, Dr. Spar is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AS1871486, previously issued to Harvey Robert Spar, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective May 29, 1997.

Dated: April 21, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97-10916 Filed 4-28-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 24, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219-5096 ext. 143). Individuals who use a telecommunications device for the deaf

(TTY/TDD) may call (202) 219-4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316), by May 29, 1997.

The OMB is particularly interested in comments which:

- ★ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- ★ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- ★ Enhance the quality, utility, and clarity of the information to be collected; and

- ★ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Underground Retorts (30 CFR 57.22401).

OMB Number: 1219-0096 (reinstatement).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Estimated Time Per Respondent: 160 hours.

Total Burden Hours: 160.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Prior to ignition of underground retorts, mine operators must submit a written plan containing site-specific safeguards and safety procedures for the underground areas of the mine affected by the retorts. The Mine Safety and Health Administration uses this information to ensure that safe practices are followed, and to determine that the procedures and safeguards used protect the safety of all persons in the mine during ignition and operation of a retort.

Agency: Mine Safety and Health Administration.

Title: Product Testing by Applicant or Third Party (30 CFR Part 7).

OMB Number: 1219-0100 (reinstatement).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 392.

Estimated Time Per Respondent: .54 hours.

Total Burden Hours: 219.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: To prevent fire and explosion hazards in underground mines, manufacturers of certain products are required to submit to the Mine Safety and Health Administration applications for product approval. Certain records and reports are required to assure continued product quality.

Agency: Veterans' Employment and Training Service.

Title: Federal Contractor Veteran's Employment Report (VETS-100).

OMB Number: 1293-0005 (revision).

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 291,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 145,500.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Veterans' Annual Report (VETS 100) is required by 38 U.S.C. 4212(d), from entities with contractors of \$10,000 or more with Federal departments or agencies of numbers of special disabled and Vietnam-era veterans in the workforce by job category and hiring location, number of employees hired and of those, the number of special disabled and Vietnam era veterans.

Agency: Employment Standards Administration.

Title: Optional Use Payroll Form Under the Davis-Bacon Act.

OMB Number: 1215-0149 (extension).

Frequency: Weekly.

Affected Public: Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 113,022.

Estimated Time Per Respondent: 56 minutes.

Total Burden Hours: 9,700,000.

Total Annualized capital/startup costs: 0.

Total Annual costs (operating/maintaining systems or purchasing services): \$363,931,000.

Description: The WH-347 is used by contractors to certify payrolls in accordance with requirements of the Copeland and Davis-Bacon Acts, attesting that proper wage rates were paid, reviewed by contracting agencies to verify that rates are legal and that employees are properly classified.

Agency: Employment Standards Administration.

Title: Request for Medical Reports (LS-158, LS-415, LS-525).

OMB Number: 1215-0106 (extension).

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 2,520.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 1,260.

Total Annualized capital/startup costs: 0.

Total Annual costs (operating/maintaining systems or purchasing services): \$882.

Description: Forms LS-158, LS-415 and LS-525 are used to request impartial medical examinations of injured employees. The information obtained is used to assist in evaluating claims for benefits.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97-11073 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-32,994]

Minnesota Mining & Manufacturing Company (3-M), Weatherford, Oklahoma; Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance TA-W-32,994 which was published in the **Federal Register** on March 12, 1997 (62 FR 11472) in FR Document 97-6242.

This revises the subject firm location for TA-W-32,994 on page 11472 to read Weatherford, Oklahoma instead of St. Paul, Minnesota.

Signed in Washington, D.C., this 10th day of April 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11070 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions,

PETITIONS INSTITUTED ON 04/14/97

the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of April, 1997.

Russel T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,401	BASF Corporation (ICWUC)	Rensselaer, NY	03/31/97	Specialty chemicals.
33,402	Snap-On Diagnostics (Co.)	Crystal Lake, IL	04/03/97	Automobile diagnostic equipment.
33,403	Acme Boot Co. (USWA)	Clarkville, TN	04/13/97	Warehouse men's western boots.
33,404	Devoe Raynolds (UPIU)	Louisville, KY	04/02/97	Latex and alkyd paint.
33,405	Wayne Manufacturing (Wkrs.)	Byrdstown, TN	04/04/97	Ladies' blouses, shorts, shirts.
33,406	G and L Apparel Inc. (Co.)	Livingston, TN	03/12/97	Ladies' pants, skirts and shorts.
33,407	Texas LPG Storage Co. (Wkrs.)	El Paso, TX	04/02/97	Store & hauls liquid petroleum gases.
33,408	Itawamba Manufacturing (Wkrs.)	Tremont, MS	03/28/97	Cotton western shirts.
33,409	Lou Levy and Son (UNITE)	Jersey City, NJ	04/03/97	Ladies' coats.
33,410	Lou Levy and Son (UNITE)	New York, NY	04/03/97	Ladies' coats—showroom.
33,411	J.R. Simplot (IBT)	Caldwell, ID	03/24/97	French fries, hash browns, tater tots.
33,412	Reggie Manufacturing, Inc. Co.)	Byrdstown, TN	03/27/97	Men's & children's sportswear.
33,413	J.R. Simplot Co. (Co.)	Burley, ID	04/06/97	French fries, hash browns, tater tots.

PETITIONS INSTITUTED ON 04/14/97—Continued

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,414	New Warwick Mining Co. (UMWP).	Bobtown, PA	03/26/97	Coal—electric generation.
33,415	Toastmaster, Inc. (Wkrs.)	Boonville, MO	03/31/97	Portable kitchen appliances.
33,416	Shape, Inc. Video (Wkrs.)	Kennebunk, ME	03/17/97	Video cassettes.
33,417	Stanley Fastening Systems (Co.)	Sanford, NC	04/03/97	Fasteners.
33,418	International Wire (Co.)	Erin, TN	04/04/97	Range harnesses & lawn care harnesses.
33,419	Ryobi Motor Products (Co.)	Anderson, SC	04/04/97	Dust collection bags for power tools.
33,420	United Technologies Auto (IAMAW).	Zanesville, OH	03/25/97	Bulkhead lines for wiring har- nesses.

[FR Doc. 97-11067 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training
Administration

[TA-W-33,189]

Carborundum Corporation,
Microelectronic Division, Phoenix
Arizona; Notice of Termination of
Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 17, 1997 in response to a worker petition which was filed on February 10, 1997 on behalf of workers at the Carborundum Corporation, Microelectronic Division, Phoenix Arizona.

An active certification covering the petitioning group of workers is already in effect (TA-W-32,234 D). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 9th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11061 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training
Administration

[TA-W-32,234, TA-W-32,234D, and TA-W-32,234E]

Corborundum Corporation: W.H.
Wendell Technology Center, Niagara
Falls, New York; Microelectronics
Division, Phoenix, Arizona; and
Microelectronics Division, Sanborn,
New York; Amended Certification
Regarding Eligibility To Apply for
Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 30, 1996, applicable to all workers of Carborundum Corporation, W.H. Wendell Technology Center, Niagara Falls, New York and Corborundum Specialty Products, Incorporated, Gardner, Massachusetts. The Notice was published in the **Federal Register** on September 6, 1996 (61 FR 47179).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Carborundum Corporation, Microelectronics Division, Phoenix, Arizona and Sanborn, New York locations. The workers are engaged in the production of ceramic based products.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of ceramic based products.

Accordingly, the Department is amending the certification to cover the workers of Carborundum Corporation, Microelectronics Division, Phoenix, Arizona and Sanborn, New York.

The amended notice applicable to TA-W-32,234 is hereby issued as follows:

All workers of Carborundum Corporation, W.H. Wendell Technology Center, Niagara Falls, New York (TA-W-32,234) and Carborundum Corporation, Microelectronics Division, Phoenix, Arizona (TA-W-32,234D) and Sanborn, New York (TA-W-32,234E) who became totally or partially separated from employment on or after March 29, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 9th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11063 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training
Administration

[TA-W-31,970, TA-W-31,970A, and TA-W-31,970B]

Henry I. Siegel Company,
Incorporated; Hohenwald, Tennessee;
Chic by H.I.S, Hickman, Kentucky; and
Chic by H.I.S, Phil Campbell, Alabama;
Amended Certification Regarding
Eligibility To Apply for Worker
Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 5, 1996, applicable to all workers of Henry I. Siegel Company, Incorporated, Hohenwald, Tennessee. The notice was published in the **Federal Register** on March 25, 1996 (61 FR 12101).

At the request of a company official, the Department reviewed the certification for workers of the subject

firm. New findings show that worker separations will occur at the Hickman, Kentucky and Phil Campbell, Alabama production facilities when they close in May, 1997. The workers are engaged in employment related to the production of ladies' and men's jeans.

The intent of the Department's certification is to include all workers of Henry I. Siegel Co., Inc. adversely affected by increased imports of ladies' and men's jeans.

The amended notice applicable to TA-W-31,970 is hereby issued as follows:

All workers of Henry I. Siegel Company, Inc., Hohenwald, Tennessee (TA-W-31,970), Henry I. Siegel Company, Inc., Chic by H.I.S., Hickman, Kentucky TA-W-31,970A) and Phil Campbell, Alabama (TA-W-31,970B) who became totally or partially separated from employment on or after February 5, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11065 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,050, TA-W-33,050C, TA-W-33,050D, and TA-W-33,050E]

Ithaca Industries, Incorporated: Thomasville, Georgia, Gastonia, North Carolina, and Alma, and Camilla, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 14, 1997, applicable to all workers of Ithaca Industries, Inc., Thomasville, Georgia. The notice will soon be published in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred at the subject firms' Gastonia, North Carolina location. The company also reported that worker separations will occur at the Alma, Georgia and Camilla, Georgia locations during April and May, 1997 respectively. Workers at Gastonia, North Carolina are engaged in the production

of knitting, dyeing and finishing fabric for Ithaca's production facilities. Workers at Alma and Camilla, Georgia locations are engaged in the production of women's underwear and panties.

The intent of the Department's certification is to include all workers of Ithaca Industries, Inc. adversely affected by increased imports.

The amended notice applicable to TA-W-33,050 is hereby issued as follows:

All workers of Ithaca Industries, Inc., Thomasville, Georgia (TA-W-33,050), Gastonia, North Carolina (TA-W-33,050C), Alma, Georgia (TA-W-33,050D) and Camilla, Georgia (TA-W-33,050E) who became totally or partially separated from employment on or after December 4, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11064 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,204]

J & J Group, Inc., Franklin, West Virginia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 18, 1997 in response to a worker petition which was filed on February 18, 1997 on behalf of workers at J & J Group, Inc., Franklin, West Virginia.

An active certification covering the petitioning group of workers remains in effect (TA-W-33,187). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 11th day of April 1997

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11060 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,198]

Minnesota Mining & Manufacturing Co. (3-M), Weatherford, Oklahoma; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 18, 1997 in response to a worker petition which was filed on January 28, 1997 on behalf of workers at Minnesota Mining & Manufacturing Co., (3-M), Weatherford, Oklahoma.

The petitioning group of workers were recently denied eligibility to apply for trade adjustment assistance benefits (TA-W-32,994). That denial was amended on April 10, 1997 to reflect the accurate location of the petitioning workers' employment. There is no new information to warrant a second investigation for trade adjustment assistance eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 11th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11071 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment

and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of April, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 04/07/97

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,376	P.L. Finishers Garment (Wrks) ...	Gibson, GA	03/20/97	Denim jeans.
33,377	Gor-Mill Manufacturing Co (Wrks).	Milaca, MN	03/19/97	Overhead projectors of schools.
33,378	Erbtec Engineering, Inc (Wrks) ...	Boulder, CO	03/20/97	RF amplifiers.
33,379	Leslie Stephens, Ltd (Wrks)	Washington, MO	03/10/97	Women's footwear.
33,380	Masback Hardware, Inc (Wrks) ..	North Bergen, NJ	03/10/97	Marketing hardware products.
33,381	Collins and Aikman (UNITE)	Port Huron, MI	03/25/97	Molded auto carpet.
33,382	Danti, Inc (Wrks)	Lansford, PA	03/25/97	Ladies' sportswear.
33,383	Osram Sylvania, Inc (Wrks)	Danvers, MA	03/18/97	Fluorescent lamps.
33,384	Language for Industry (Comp)	Beachwood, OH	03/20/97	Translations of technical documents.
33,385	Anchor Glass Container (GMP) ..	Antioch, CA	03/20/97	Glass containers.
33,386	Anchor Glass Container (GMPU)	Dayville, CT	03/20/97	Glass containers.
33,387	Anchor Glass Container (GMPU)	Connellsville, PA	03/20/97	Glass containers.
33,388	Gandalf Systems Corp (Wrks)	Delran, NJ	03/24/97	Data switch network products.
33,389	Rayovac Corp (Comp)	Kinston, NC	03/25/97	Assembles flashlights & bulbs.
33,390	Texas LPG Storage Co (Wrks) ...	El Paso, TX	03/24/97	Stores & hauls liquified petroleum gas.
33,391	Asher Company (Wrks)	Fitchburg, MA	03/12/97	Men's apparel.
33,392	AI Tech Specialty Steel (USWA)	Dunkirk, NY	03/18/97	Specialty stainless steel.
33,393	Gramercy Mills, Inc (Wrks)	Fairfield, NJ	02/25/97	Girl's swimsuits & coverups.
33,394	Georgia Pacific West (SMLW)	Martell, CA	02/20/97	Particleboard.
33,395	Sans Souci Lingerie (Comp)	Poplar Bluff, MO	03/26/97	Gowns, panties, slips, pajamas.
33,396	Alofs Manufacturing Co (CLA)	Grand Rapids, MI	03/25/97	Auto stamping.
33,397	Master Apparel (Wrks)	Somerville, TN	03/26/97	Men's & boys' slacks.
33,398	Admin. & Technical Serv (Comp)	Beloit, WI	03/27/97	Data entry.
33,399	Tri-Con Industries (Wrks)	Columbia, MO	03/27/97	Auto trim covers, door panels.
33,400	Krupp Gerlach Co (UAW)	Danville, IL	04/02/97	Forged diesel crankshafts.

[FR Doc. 97-11068 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,123A]

Roadmaster Corporation, Delavan, Wisconsin

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on April 7, 1997, applicable to workers of Roadmaster Corporation located in Delavan, Wisconsin. The notice will soon be published in the **Federal Register**.

On July 2, 1996, the Department issued a certification of eligibility applicable to all workers of Roadmaster

Corporation, Delavan, Wisconsin, TA-W-32,384. Workers separated from employment with the subject firm on or after May 7, 1995 until July 12, 1998 are eligible to apply for worker adjustment assistance program benefits.

Based on this information, the Department is terminating the certification for petition number TA-W-33,123A. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed at Washington, D.C. this 16th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11066 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 211(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address

shown below, not later than May 9, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade

Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 31st day of March, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 03/31/97

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,358	Sensormatic Co. (Wkrs)	Pearl River, NY	03/18/97	Closed circuit security systems.
33,359	Hauser Lake Lumber (Co)	Post Falls, ID	03/12/97	Remanufacture lumber.
33,360	Thomson Consumer Electron (Wkrs).	Indianapolis, IN	03/17/97	Televisions.
33,361	Interactive Composition (Wkrs) ...	Logan, UT	03/20/97	Transfer manuscripts into text-books.
33,362	Interactive Composition (Wkrs) ...	Pleasant Hill, CA	03/20/97	Transfer manuscripts into text-books.
33,363	Spornell Fashions (Wkrs)	Garfield, NJ	03/06/97	Ladies' jackets.
33,364	Cone River Granite Finish (UNITE).	Haw River, NC	03/13/97	Corduroy, chamois, flannel fabrics.
33,365	Anchor Glass Container (GMP) ..	Houston, TX	02/26/97	Glass containers.
33,366	Jessup Door (USWA)	Dowagiac, MI	02/22/97	Pine wooden doors.
33,367	Mead Corp School & Office (UPIU).	Saint Joseph, MO	03/10/97	School and office supplies.
33,368	In-Sink-Erator (Wkrs)	Elkhorn, WI	03/12/97	Garbage disposal.
33,369	Leigh Knits, Inc. (Wkrs)	Bean Station, TN	03/14/97	T-Shirts.
33,370	Turntable, Inc. (Co)	Sparta, TN	03/20/97	Jeans.
33,371	Tugalo River Boxer Co. (Co)	Toccoa, GA	03/20/97	Ralph Lauren polo boxer shorts.
33,372	Superior Solutions (Wkrs)	El Paso, TX	03/18/97	Stonewashed denim jeans.
33,373	Little Tikes (Co)	Aurora, MO	03/18/97	Toys.
33,374	Parkway Building Systems (Co) ..	Paulsbo, WA	03/19/97	Wall panels (wood frames).
33,375	Eagle Coach Corp (Wkrs)	Brownsville, TX	03/17/97	Buses and components.

[FR Doc. 97-11072 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,219]

Mazzucchelli, Inc., U.S. Division (D/B/A/ Tectonic Industries, Incorporated) Berlin, Connecticut; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 1997, applicable to all workers of Tectonic, Incorporated, Berlin, Connecticut. The notice was published in the **Federal Register** on March 31, 1997 (62 FR 15199).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of plastic sheeting for the optical industry. New information provided by the State shows that some of the claimants' wages are reported under the Unemployment Insurance (UI) tax account for Mazzucchelli, Inc., U.S. Division, Berlin, Connecticut, Tectonic's parent company.

The intent of the Department's certification is to include all workers of Tectonic, Incorporated who were adversely affected by imports. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA-W-33,219 is hereby issued as follows:

All workers of Mazzucchelli, Inc., U.S. Division, D/B/A Tectonic Industries, Incorporated, Berlin, Connecticut engaged in employment related to the production of plastic sheeting for the optical industry who became totally or partially separated from

employment on or after February 5, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97-11062 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement—Transitional Adjustment Assistance Implementation Act (P.L. 103-182), hereinafter called

(NAFTA-TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether

the workers separated from employment of after December 8, 1993 (date of enactment of P.L. 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Program Manager of OTAA not later than May 9, 1997.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than May 9, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of April, 1997.

Russell Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Nantucket Industries (Co.)	Cartersville, GA	03/11/97	NAFTA-1,559	Men's undergarments.
Ametek-March Electric (IAMAW)	Cambridge, OH	01/31/97	NAFTA-1,560	Rotating fans.
Northern Engraving (IAMAW)	Sparta, WI	03/12/97	NAFTA-1,561	Automotive trim, dashboard and decals.
Lithonia Lighting (IBEW)	Conyers, GA	03/13/97	NAFTA-1,562	Industrial fluorescent lighting fixtures.
Hartford Eichenauer (Wkrs)	Newport, NH	03/14/97	NAFTA-1,563	Dehydrators and toasters.
Design House (Wkrs)	Stanwood, WA	03/13/97	NAFTA-1,564	Wood turnings.
GCC Cutting (Wkrs)	El Paso, TX	03/17/97	NAFTA-1,565	Cutting for blazers and shirts.
Anchor Glass Container (GMPPA)	Dayville, CT	03/17/97	NAFTA-1,566	Glass containers—bottles.
Deckers Outdoor (Co.)	Carpenteria, CA	03/14/97	NAFTA-1,567	Sport sandals and boots.
Deckers Outdoors (Co.)	Goleta, CA	03/14/97	NAFTA-1,568	Sport sandals and boots.
Deckers Outdoor (Co.)	Ventura, CA	03/14/97	NAFTA-1,569	Sport sandals and boots.
Eagle Ottawa Leather (UPW)	Grand Haven, MI	03/07/97	NAFTA-1,570	Leather.
Washington Public Power Supply System (IBEW)	Richland, WA	11/25/96	NAFTA-1,571	Electricity.
In-Sink-Erator (Wkrs)	Elkhorn, WI	03/19/97	NAFTA-1,572	Hot water dispensers.
Thomson Consume Electronics (Wkrs)	Indianapolis, IN	03/19/97	NAFTA-1,573	Plastic molded.
Stony Creek Knitting Mill (Wkrs)	Rocky Mount, NC	03/19/97	NAFTA-1,574	Sportswear.
Little Tikes (Wkrs)	Aurora, MO	03/20/97	NAFTA-1,575	Toys.
Leigh Knits (Wkrs)	Bean Station, TN	03/18/97	NAFTA-1,576	T-Shirt cut and sew contractor.
Eagle Coach (Wkrs)	Brownsville, TX	03/21/97	NAFTA-1,577	Buses and components.
Economy Color Card (UPIU)	Roselle, NJ	03/19/97	NAFTA-1,578	Sample cards and books of wallpaper.
Hauser Lake Lumber (Wkrs)	Post Falls, ID	03/21/97	NAFTA-1,579	Lumber.
Rubbermaid Cleaning and Maintenance (Wkrs)	Sparks, NV	03/19/97	NAFTA-1,580	Brooms and mops.
Nick-O Sewing (Wkrs)	Moscon, TN	03/20/97	NAFTA-1,581	Industrial machines and parts.
Tugalo River Boxer (Wkrs)	Tocca, GA	03/24/97	NAFTA-1,582	Boxer shorts.
V.V.P. America (Co.)	Hickory, NC	03/18/97	NAFTA-1,583	Glass table tops.
M and W Sewing (Wkrs)	Brooklyn, NY	03/24/97	NAFTA-1,584	Blouses, dresses, shirts.
Superior Solutions (Wkrs)	El Paso, TX	03/25/97	NAFTA-1,585	Jeans, shorts.
Calvin Klein Jeanswear (Wkrs)	New York, NY	03/25/97	NAFTA-1,586	Jeans, pants, jackets, skirts.
Stanley Works (Wkrs)	Sanford, NC	03/25/97	NAFTA-1,587	Collated fasteners.
Collins and Aikman (UNITE)	Port Huron, MI	03/26/97	NAFTA-1,588	Molded automobile carpet.
BOC Gases (IBT)	Bethlehem, PA	03/26/97	NAFTA-1,589	Pipeline.
Jessup Door (USWA)	Dowagiac, MI	03/19/97	NAFTA-1,590	Doors.
AM General (UAW)	Indianapolis, IN	03/14/97	NAFTA-1,591	Commercial and military.
Parkway Building Systems (Co.)	Edwards, WA	03/24/97	NAFTA-1,592	Lumber.
AI Tech Speciality Steel (USWA)	Watervliet, NY	03/27/97	NAFTA-1,593	Steel ingots.
Administrative and Technical Services (Co.)	Beloit, WI	03/28/97	NAFTA-1,594	Data entry services.
Gor Mill (Wkrs)	Milaca, MN	03/24/97	NAFTA-1,595	Over head projector.
New Warwick Mining (UMWA)	Bobtown, PA	03/31/97	NAFTA-1,596	Coal.
Texas LPG Storage (Wkrs)	El Paso, TX	03/31/97	NAFTA-1,597	Stores and hauls liquefied petroleum gas.
Tri-Con Industries (Wkrs)	Columbia, MO	03/31/97	NAFTA-1,598	Automotive trim covers.
Rayovac (Co.)	Kinston, NC	04/01/97	NAFTA-1,599	Assembly of flashlights and batteries.
Georgia Pacific (Wkrs)	Martell, CA	03/21/97	NAFTA-1,600	Lumber.
Desert Cleaners (Wkrs)	El Paso, TX	04/02/97	NAFTA-1,601	Denim washing, pressing and finishing.
BASF Corporation (ICWU)	Rensselaer, NY	04/03/97	NAFTA-1,602	Textile, leather and paper dyes.
J.R. Simplot (IBT)	Caldwell, ID	04/07/97	NAFTA-1,603	Potato processing.
I AM Apparel (Co.)	Herrin, IL	04/07/97	NAFTA-1,604	Ladies maternity knit.
Amelia Dress (UNITE)	Farmville, VA	03/14/97	NAFTA-1,605	Children's dresses.

APPENDIX—Continued

Subject firm	Location	Date received at governor's office	Petition No.	Articles produced
Amelia Dress (UNITE)	Appomattox, VA	03/14/97	NAFTA-1,606	Childrens clothing.
Colber Corp. (The) (Co.)	Newark, NJ	04/08/97	NAFTA-1,607	Wirewound resistors.
United Technologies (IAMAW)	Zanesville, OH	03/28/97	NAFTA-1,608	Bulkhead line, molds for wiring.
J.R. Simplot (AFGM)	Heyburn, ID	04/08/97	NAFTA-1,609	Potato products.
Anchor Glass (GMAW)	Antioch, CA	04/08/97	NAFTA-1,610	Glass containers.
Arrow Auto (Wkrs)	Santa Maria, CA	04/08/97	NAFTA-1,611	Auto parts.
Findlay Refractories (Wkrs)	Washington, PA	04/09/97	NAFTA-1,612	Firebrick.
Rip Curl (Wkrs)	Oceanside, CA	04/08/97	NAFTA-1,613	Wetsuits.
Holiday Products (Wkrs)	El Paso, TX	04/11/97	NAFTA-1,614	Christmas products.
Jos J. Pietrafesa (Wkrs)	Liverpool, NY	04/14/97	NAFTA-1,615	Men's and women's clothing.
Stabilus (Co.)	Colmar, PA	04/15/97	NAFTA-1,616	Pneumatic gas spring and dampers.

[FR Doc. 97-11069 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****Construction Fall Protection Plans and Records****AGENCY:** Occupational Safety and Health Administration, Labor.**ACTION:** Notice; proposed information collection request; submitted for public comment and recommendations.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of approval for the paperwork requirements of 29 CFR 1926.502 and 1926.503, Fall Protection in Construction.

DATES: Written Comments must be submitted on or before June 30, 1997. Comments should:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will be practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR-97-7, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219-7894. Written comments limited to 19 pages or less may be transmitted by facsimile to (202) 219-5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitutional Avenue, NW., Washington, DC 20210, (202) 219-7198. Copies of the referenced information collection requests are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219-8076. For electronic copies, contact the Labor News Bulletin Board (202) 219-4784; or OSHA's Web Page on Internet at <http://www.osha.gov/>.

SUPPLEMENTARY INFORMATION:**Background**

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management

and Budget (OMB) for certain information collection requirements contained in 29 CFR 1926.502 and 1926.503. That approval will expire on September 30, 1977, unless OSHA applies for an extension of the OMB approvals. This notice initiates the process for OSHA to request an extension of the current OMB approval.

As part of OMB's and OSHA's continuing paperwork reduction effort, OSHA seeks to reduce the paperwork burden hours in 29 CFR 1926.502 and 1926.503 based on input from parties interested in the regulatory scope of that regulation. The purpose of this notice is to solicit public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimates. Interested parties are requested to review OSHA's estimates which are based on information available during rulemaking and to comment on their accuracy or appropriateness in today's workplace situation. OSHA bases its existing estimates upon information made available to the agency during the initial rulemaking effort for 29 CFR 1926.500-.503 (August 9, 1994, 59 FR 40672) and is interested in learning whether they are outdated.

Current Action

This notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1926.502 and 1926.503 Certification of Safety Net Installation, Fall Protection Plans and Training Certification Records.

Type of Review: Extension of existing approval.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Fall Protection in Construction.
OMB Number: 1218-0197.

Agency Number: Docket No. ICR-97-7.

Emergency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 6,000 (sites of net installation certification); 100,000 (sites using Fall Protection Plan); and 4 million (workers trained).

Estimated Time Per Respondent: 5 minutes (Safety Net Certification Records); One hour and 5 minutes (Fall Protection Plan); 5 minutes (Training Certification Records).

Total Burden Hours: 767,246 Hours (500 hours for safety net certification records; 100,080 hours for the fall protection plans; and 666,666 hours for training certification records).

Comments submitted in response to this notice will be summarized and included in a request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed this 18th day of April 1997.

Russell B. Swanson,

Director, Directorate of Construction.

[FR Doc. 97-11059 Filed 4-28-97; 8:45 am]

BILLING CODE 4510-26-M

LEGAL SERVICES CORPORATION

Notice of Availability of 1998 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Correction.

SUMMARY: In a notice published on April 24, 1997 (62 FR 20038), the Legal Services Corporation announced the availability of competitive grant funds to solicit grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients for calendar year 1998. The following service area should not have been included.

State	Service area
Texas	TX-7

Date Issued: April 24, 1997.

Merceria L. Ludgood,

Deputy Director, Office of Program Operations.

[FR Doc. 97-11010 Filed 4-28-97; 8:45 am]

BILLING CODE 7050-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97-051)]

NASA Advisory Council, Advisory Committee on the International Space Station (ACISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Advisory Committee on the International Space Station.

DATES: Monday, May 12, 1997, from 8:30 a.m. until 4 p.m. and Tuesday, May 13, 1997, from 8:30 a.m. until 4 p.m. On Tuesday, May 13, 1997, the Advisory Committee on the International Space Station will meet jointly with the NASA Advisory Council, Life and Microgravity Science and Application Advisory Committee.

ADDRESSES: Monday, May 12, 1997 NASA Headquarters, PRC, 9th Floor, 300 E Street, SW, Washington, DC 20546; and Tuesday, May 13, 1997, NASA Headquarters, MIC 7, 7th Floor, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Mr. W. Michael Hawes, Code M-4 National Aeronautics and Space Administration, Washington, DC 20546, 202/358-0242.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Program Status Update.
- EVA Requirements.
- Task Group Reports.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 21, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97-10918 Filed 4-28-97; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Company; Notice of Issuance of Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 165 and 137 to Facility Operating License Nos. NPF-14 and NPF-22, respectively, to Pennsylvania Power & Light Company, (the licensee), which revised the Technical Specifications for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, PA. The amendment is effective as of the date of issuance.

The amendment modified the current Technical Specifications (TSs) for each unit to include two sections of the Improved Technical Specifications (ITS) by adding Limiting Condition for Operation (LCO) 3.10.3, "Single Control Rod Withdrawal-Hot Shutdown," and LCO 3.10.4, "Single Control Rod Withdrawal-Cold Shutdown," in a modified format and with cross references that are compatible with the current TSs. This change permits control rod drive tests to be conducted during refueling operations. The LCOs in the ITS format will be issued at a later date with the full ITS conversion package.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on March 5, 1997 (62 FR 10090). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (62 FR 17886).

For further details with respect to the action see (1) the application for amendment dated February 11, 1997, as supplemented April 7, 1997, (2) Amendment Nos. 165 and 137 to License Nos. NPF-14 and NPF-22, respectively, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 23rd day of April 1997.

For the Nuclear Regulatory Commission.

Chester Poslusny, Sr.,

*Project Manager, Project Directorate I-2,
Division of Reactor Projects—I/II Office of
Nuclear Reactor Regulation.*

[FR Doc. 97-10976 Filed 4-28-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[IA 97-008]

Derek F. Stephens; Confirmatory Order Prohibiting Involvement in NRC- Licensed Activities (Effective Immediately)

I

Mr. Derek F. Stephens was employed as a radiographer by Barnett Industrial X-Ray, Inc. (Licensee). The Licensee is the holder of License No. 35-26953-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 and last renewed on March 21, 1996. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein.

II

On October 3, 1996, Mr. Stephens and a radiographer's assistant were conducting radiography activities at a refinery in Ponca City, Oklahoma. Mr. Stephens was the more senior of the two and had received training regarding his responsibilities for conducting activities in accordance with Licensee procedures and NRC regulations.

NRC regulations require, in part, that at all times during the conduct of radiography activities, each individual wear a direct reading pocket dosimeter, an alarm ratemeter, and either a film badge or a thermoluminescent dosimeter (TLD) (10 CFR 34.33). NRC

regulations also require that a survey be made after each exposure to determine that the sealed source has been returned to its shielded position (10 CFR 34.43). NRC regulations further require that whenever a radiographer's assistant uses radiographic exposure devices or conducts radiation surveys required by 10 CFR 34.43(b), and the radiographer's assistant shall be under the personal supervision of a radiographer, including the radiographer providing immediate assistance if required and the radiographer watching the assistant's performance of the operations (10 CFR 34.44).

During radiography activities on October 3, 1996, Mr. Stephens and the radiographer's assistant were assigned to complete two radiographs. The exposure device was placed on a scaffold approximately 6 feet above the ground with the drive cable controls located on the ground. After the second exposure, Mr. Stephens instructed the radiographer's assistant to crank the source back in and remove the source guide tube. Mr. Stephens then left to remove the barricades and did not watch the radiographer's assistant. Without a survey meter, the radiographer's assistant approached and disconnected the source guide tube. After disconnecting the source guide tube, the radiographer's assistant observed that the source was not fully retracted into the exposure device and was still exposed. The radiographer's assistant immediately left the vicinity of the source and informed Mr. Stephens. As a result of this event, the radiographer's assistant received a higher-than-normal exposure, but the exposure did not exceed regulatory limits.

In violation of NRC requirements, Mr. Stephens did not wear a direct reading pocket dosimeter, an alarm ratemeter, and either a film badge or a TLD. Further, Mr. Stephens did not effectively supervise the radiographer's assistant to ensure that the radiographer's assistant conducted a proper survey, as required by 10 CFR 34.43(b). Because he was not properly supervising the radiographer's assistant, Mr. Stephens did not notice that when the radiographer's assistant approached the source, the radiographer's assistant could not have performed the proper survey because he did not have a survey meter.

NRC's investigation and inspection of this incident began on October 4, 1996. In a sworn, signed statement provided by Mr. Stephens to NRC's Office of Investigations (OI), Mr. Stephens stated he had been working for the Licensee since August 1995, and that he had

received written and oral training, on-the-job training, and formal classroom training. He stated he had been a Level II radiographer for about 3 months and that he had been taught his responsibilities as a supervisor, including ensuring that the radiographer's assistant and others comply with safety and regulations. Further, he stated that both he and the radiographer's assistant forgot their personal dosimetry and realized it only when they discovered the source was not retracted. The results of NRC's investigation and inspection are documented in NRC Inspection Report 030-30691/96-01 dated December 23, 1996. A predecisional enforcement conference was conducted with the Licensee on January 6, 1997, and on February 24, 1997, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$4000 to the Licensee for the violations described in this Section II of this Order.

III

Based on its review of all available information, the NRC has concluded that Mr. Stephens, a former employee of the Licensee, engaged in deliberate misconduct in violation of 10 CFR 30.10 by causing the Licensee to be in violation of 10 CFR 34.33(a). Specifically, notwithstanding Mr. Stephens' assertion that he forgot his personal dosimetry, the NRC has concluded that Mr. Stephens deliberately failed to wear the required personal monitoring devices. This conclusion is based on the fact that: (1) Mr. Stephens was trained on using personal monitoring devices; (2) Mr. Stephens was provided personal monitoring devices, which he had in the Licensee's truck used in traveling to the work site; (3) prior to conducting licensed activities, Mr. Stephens is required to perform daily preoperational tests, such as checking the operability of the alarming ratemeter and zeroing the pocket dosimeter assigned to him; and (4) in an October 8, 1996 signed, written statement to OI, Mr. Stephens stated that he "knew it was [his] responsibility to ensure Kevin [Assistant Radiographer] had his dosimetry but did not do so."

In addition, the NRC has concluded that Mr. Stephens' failure to supervise, through direct observation, the radiographer's assistant as he approached the exposure device without a survey instrument and attempted to disassemble the equipment, represents careless disregard for regulatory requirements. Given his training and experience, Mr. Stephens

knew or should have known of the requirements of 10 CFR 34.44 that a radiographer's assistant must be under the personal supervision of a radiographer, including the radiographer providing immediate assistance if required and the radiographer watching the assistant's performance of operations. This conclusion is also supported by Mr. Stephens' October 8, 1996 signed, written statement to OI that he had been taught that his responsibility as a supervisor included insuring the assistants and others complied with safety and regulations.

These willful acts are significant because Mr. Stephens, the senior radiographer, failed to observe the safeguards designed to protect him, the radiographer's assistant, and others from unnecessary and potentially dangerous radiation exposures. These willful acts contributed to an unnecessary radiation exposure to the radiographer's assistant. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. Mr. Stephen's actions during this incident have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

IV

By letter dated February 19, 1997, the NRC described its conclusions to Mr. Stephens. The letter documented the NRC's understanding that Mr. Stephens did not wish to participate in further discussions of the above issues, and that Mr. Stephens agreed to a commitment that he be prohibited from engaging in NRC-licensed activities for a period of 3 years. Mr. Stephens signed a statement dated March 11, 1997, consenting to the issuance of this Order with the commitment as described in Section V below. Mr. Stephens further agreed in his signed statement, that this Order is to be effective upon issuance and that he has waived his right to a hearing.

I find that Mr. Stephens' commitments as set forth in Section V are acceptable and necessary and conclude that with the commitment the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Stephens' commitments be confirmed by this Order. Based on the above and Mr. Stephens' consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR

2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

Mr. Stephens is prohibited from engaging in NRC-licensed activities, including work conducted as an employee of an Agreement State licensee if the work is performed in a non-Agreement State or an area of exclusive federal jurisdiction, for a period of 3 years from the date of this order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Stephens of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Mr. Stephens, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011 and to Mr. Stephens. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall

not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 15th day of April 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97-10972 Filed 4-28-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-297]

Environmental Assessment and Notice of Finding of No Significant Environmental Impact Regarding Proposed Renewal of Facility License No. R-120, North Carolina State University

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to renew for 20 years Facility License No. R-120 for the North Carolina State University (NCSU or the licensee) PULSTAR Research Reactor located on the NCSU campus in Raleigh, North Carolina.

Environmental Assessment

This environmental assessment is written in connection with the proposed renewal for 20 years of the facility license of the NCSU PULSTAR Research Reactor (PULSTAR) at Raleigh, North Carolina, in response to a timely application from the licensee dated August 19, 1988; as supplemented on January 2, April 17, and December 18, 1989; April 17 and July 18, 1990; January 25, 1991; November 30, 1992; September 15, 1995; and October 4, November 25, and December 30, 1996. The proposed action would authorize continued operation of the reactor. The facility has been in operation since Facility License No. R-120 was issued in 1972. Currently, there are no plans to change any of the structures or operating characteristics associated with the reactor during the renewal period requested by the licensee.

Need for the Proposed Action

The proposed action is required to authorize continued operation of the reactor so that the facility can continue to be used in the licensee's mission of research.

Alternatives to the Proposed Action

Since we have concluded that there is no significant environmental impact associated with this license renewal, any alternatives will either have no

significant impact or greater impact than the proposed action.

An alternative to the proposed action that was considered was not renewing the operating license. This alternative would have led to cessation of operations, and decommissioning of the facility, with a resulting change in status and a likely small impact on the environment.

Another alternative is to take no action on the request for extension. The facility license would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Environmental Impact

The PULSTAR operates in an existing shielded pool of water inside an existing multiple-purpose building, so this licensing action would lead to no change in the physical environment.

On the basis of the review of the specific facility operating characteristics that are considered for potential impact on the environment, as set forth in the staff's safety evaluation report (SER) for this action, "Safety Evaluation Report Related to the Renewal of the Operating License for the Research Reactor at North Carolina State University" (NUREG-1572), it is concluded that renewal of this facility license will have an insignificant environmental impact. Although judged insignificant, operating features with the greatest potential environmental impact are summarized below.

Argon-41, a product from neutron irradiation of air during operation, is the principal airborne radioactive effluent from the PULSTAR during routine operations. Conservative calculations by the staff, based on the average total amount of argon-41 released from the reactor during the last several years, predict a maximum potential annual whole-body dose of less than 1 millirem in unrestricted areas. Radiation exposure rates measured outside the reactor facility building are consistent with this computation. For continuous reactor operation, the licensee conservatively estimates a maximum potential annual whole-body dose of about 25 millirem in unrestricted areas.

The staff has considered hypothetical credible accidents at the PULSTAR and has concluded that there is reasonable assurance that such accidents will not release a significant quantity of fission products from the fuel cladding and, therefore, will not cause significant radiological hazard (less than 1 mrem for the maximum hypothetical accident) to the environment or the public.

This conclusion is based on the following:

(a) The maximum reactivity for any single experiment allowed under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding.

(b) At a thermal power level of 1000 kilowatts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous, total loss of coolant, and

(c) The hypothetical loss of integrity of the cladding of three fuel pins will not lead to radiation exposures in the unrestricted environment that exceed guideline values of 10 CFR Part 20.

In addition to the analyses in the SER summarized above, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that there will be no significant environmental impact associated with the operation of research reactors licensed to operate at power levels up to and including 2 MW(t) and that an environmental impact statement is not required for the issuance of construction permits or operating licenses for such facilities. We have determined that this generic evaluation is applicable to operation of the PULSTAR and that there are no special or unique features that would preclude reliance on the generic evaluation.

Alternative Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The staff has obtained the technical assistance of the Idaho National Engineering Laboratory to perform the safety evaluation of continued operation of the PULSTAR. The staff consulted with the North Carolina State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license amendment dated August 19,

1988, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037.

Dated at Rockville, Maryland this 18th day of April 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

Environmental Considerations Regarding the Licensing of Research Reactors and Critical Facilities

Introduction

This discussion deals with research reactors and critical facilities that are designed to operate at low power levels, 2 Mw(t) and lower, and are used primarily for basic research in neutron physics, neutron radiography, isotope production and experiments associated with nuclear engineering, training, and as a part of a nuclear physics curriculum. Operation of such facilities will generally not exceed a 5-day week of 8-hour days, or about 2000 hours per year. Such reactors are located adjacent to technical service support facilities with convenient access for students and faculty.

Sited most frequently on the campuses of large universities, these reactors are usually housed in already existing structures, appropriately modified, or placed in new buildings that are designed and constructed to blend in with existing facilities. However, the environmental considerations discussed herein are not limited to those facilities that are part of universities.

Facility

There are no exterior conduits, pipelines, electrical or mechanical structures, or transmission lines attached to or adjacent to the facility other than for utility services, that are similar to those required in other similar facilities, specifically laboratories. Heat dissipation, if required, is generally accomplished by use of a cooling tower located next to or on the roof of the building. These cooling towers typically are on the order of 10 by 10 by 10 feet and are comparable to cooling towers associated with the air conditioning systems of large office buildings. Heat dissipation may also be accomplished by transfer through a heat exchanger to water flowing directly to a sewer or a chilled water system. Makeup for the cooling system is readily available and

usually obtained from the local water supply.

Radioactive gaseous effluents during normal operations are limited to argon-41, and the release of radioactive liquid effluents can be carefully monitored and controlled. Liquid wastes are collected in storage tanks to allow for decay and monitoring before dilution and release to the sanitary sewer system or the environment. This liquid waste may also be solidified and disposed of as solid waste. Solid radioactive wastes are packed and shipped offsite for disposal or storage at NRC-approved sites. The transportation of such waste is done in accordance with existing NRC and Department of Transportation regulations in approved shipping containers.

Chemical and sanitary waste systems are similar to those at other similar laboratories and buildings.

Environmental Effects of Site Preparation and Facility Construction

Construction of such facilities invariably occurs in areas that have already been disturbed by other building construction and, in some cases, solely within an already existing building. Therefore, construction would not be expected to have any significant effect on the terrain, vegetation, wildlife, or nearby waters or aquatic life. The societal, economic, and aesthetic impacts of construction would be no greater than those associated with the construction of an office building or a similar research facility.

Environmental Effects of Facility Operation

Release of thermal effluents from a reactor of less than 2 Mw(t) will not have a significant effect on the environment. This small amount of waste heat is generally rejected to the atmosphere by means of small cooling towers. Extensive drift and/or fog will not occur at this low power level. The small amount of waste heat released to sewers, in the case of heat exchanger secondary flow directly to the sewer, will not raise average water temperatures in the environment.

Release of routine gaseous effluents can be limited to argon-41, which is generated by neutron activation of air. In most cases, this release will be kept as low as practicable by using gases other than air for supporting experiments. Experiments that are supported by air are designed to minimize production of argon-41. Yearly doses to unrestricted areas will be at or below established 10 CFR Part 20 limits. Routine releases of radioactive liquid effluents can be carefully

monitored and controlled in a manner that will ensure compliance with current standards. Solid radioactive wastes will be shipped to an authorized disposal site in approved containers. These wastes should not require more than a few shipping containers a year.

On the basis of experience with other research reactors, specifically TRIGA reactors operating in the 1-to-2-Mw(t) range, the annual release of gaseous and liquid effluents to unrestricted areas should be less than 30 curies and 0.01 curie, respectively.

No release of potentially harmful chemical substances will occur during normal operation. Small amounts of chemicals and/or high-solid-content water may be released from the facility through the sanitary sewer during periodic blowdown of the cooling tower or from laboratory experiments.

Other potential effects of the facility, such as aesthetics, noise, or societal effects or impact on local flora and fauna are expected to be too small to measure.

Environmental Effects of Accidents

Accidents ranging from the failure of experiments up to the largest core damage and fission product release considered possible result in doses that are less than 10 CFR Part 20 limits and are considered negligible with respect to the environment.

Unavoidable Effects of Facility Construction and Operation

The unavoidable effects of construction and operation involve the materials used in construction that cannot be recovered and the fissionable material used in the reactor. No adverse impact on the environment is expected from either of these unavoidable effects.

Alternatives to Construction and Operation of the Facility

To accomplish the objectives associated with research reactors, there are no suitable alternatives. Some of these objectives are training of students in the operation of reactors, production of radioisotopes, and use of neutron and gamma ray beams to conduct experiments.

Long-Term Effects of Facility Construction and Operation

The long-term effects of research facilities are considered to be beneficial as a result of their contribution to scientific knowledge and training. Because of the relatively small amount of capital resources involved and the small impact on the environment, very little irreversible or irretrievable

commitment is associated with such facilities.

Costs and Benefits of Facility Alternatives

The costs of facility alternatives are on the order of several millions of dollars and have very little environmental impact. The benefits include, but are not limited to, some combination of the following: conduct of activation analyses, conduct of neutron radiography, training of operating personnel, and education of students. Some of these activities could be conducted using particle accelerators or radioactive sources, which would be more costly and less efficient. There is no reasonable alternative to a nuclear research reactor for conducting this spectrum of activities.

Conclusion

The staff concludes that there will be no significant environmental impact associated with the licensing of research reactors or critical facilities designed to operate at a power level of 2 Mw(t) or lower and that no environmental impact statements must be written for the issuance of construction permits, operating licenses, or license renewals for such facilities.

Dated: December 3, 1996.

[FR Doc. 97-10973 Filed 4-28-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8905]

Quivira Mining Company; Final Finding of No Significant Impact; Notice of Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA-1473 to authorize the licensee, Quivira Mining Company (QMC), to accept 11e.(2) material for disposal at its Ambrosia Lake uranium mill and tailings site, located near Grants, New Mexico. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Hooks, Uranium Recovery Branch, Mail Stop TWFN 7-J9, Division

of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415-7777.

SUPPLEMENTARY INFORMATION:

Background

Source Material License SUA-1473 was originally issued by NRC on September 2, 1986, pursuant to Title 10, Code of Federal Regulations (10 CFR), Part 40, Domestic Licensing of Source Material. This license currently authorizes QMC to (1) receive, acquire, possess, and transfer uranium at the Ambrosia Lake facility, (2) possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by operations at the mill, and (3) accept, for disposal, limited amounts of byproduct material from in situ leach (ISL) uranium mining facilities. The mill was operated on a continual basis from May 1958 until January 1985, when the mill was placed on standby.

Identification of the Proposed Action

On November 20, 1995, Quivira Mining Company (Quivira) requested a license amendment for the Ambrosia Lake facility to annually receive and dispose of up to 10,000 yd³ (about 14,000 tons at a nominal 1.4 tons per yd³) per generator of 11e.(2) byproduct material in tailings impoundment #2, with an annual total limit of 100,000 yd³ from all generators. NRC staff would require by license condition that all generators, including in situ facilities, be limited to the 10,000 yd³ per generator, and that the total annual limit of 100,000 yd³ be inclusive of all material received from generators, including in situ facilities.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the requested disposal of 11e.(2) material at the Ambrosia Lake site, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its appraisal, the NRC staff considered the following: (1) information contained in the approved Reclamation Plan for the Ambrosia Lake site; (2) information contained in QMC's amendment request; and (3) information derived from NRC staff site visits and inspections of the Ambrosia Lake mill site and from communications with QMC. The results of the staff's appraisal are documented in an Environmental Assessment. The safety aspects for the

continued operation of the mill are discussed in a Technical Evaluation Report.

In the approved 1986 reclamation plan, the Ambrosia Lake facility's tailings capacity was based on an assumption of 18 more years of production at 7,000 tons of tailings per day which would yield an additional 43 million tons of tailings material. When added to the 31 million tons already in the disposal impoundments, the total quantity the design accounted for was 74 million tons. Ambrosia Lake halted operations far earlier than the planned 18 year run and currently has 33 million tons of tailings in impoundments #1 and #2. Therefore, the excess capacity under the 1986 reclamation plan is 41 million tons.

Conclusions

NRC believes this request will not result in significant environmental impacts because the impacts will be a small fraction of those that could result due to currently approved activities for the following reasons:

(1) The total annual volume is a small fraction of the total volume allowed to be produced under the current license.

(2) Groundwater impacts are minimized because the received material will be free of standing liquids and the disposal cells will have a 3-foot thick minimum clay liner.

(3) Air releases will be minimized because most of the material received will be packaged in drums or crates.

(4) Exposure to workers is expected to be similar or lower than exposures to personnel working with 11e.(2) byproduct material under currently licensed operations.

(5) Standard operating procedures are in place for all operational process activities involving radioactive materials that are handled, processed, or stored;

(6) The licensee will continue an acceptable groundwater detection monitoring program to ensure compliance with the requirements of 10 CFR Part 40, Appendix A;

(7) The licensee will conduct site decommissioning and reclamation activities in accordance with NRC-approved plans; and

(8) Because the staff has determined that there will be no significant impacts associated with approval of the license renewal, there can be no disproportionately high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of 'Environmental Justice' concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and

Safeguards Policy and Procedures Letter 1-50, Rev.1, is not warranted.

Alternatives to the Proposed Action

The licensee's proposed action is to amend Source Material License SUA-1473, to allow disposal of 11e.(2) material at the Ambrosia Lake site, as requested by QMC. Therefore, the principal alternatives available to NRC are to:

(1) Approve the license amendment with such conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(2) Deny the amendment to the license.

Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action; therefore, any alternatives with equal or greater environmental impacts need not be evaluated. Since the environmental impacts of the proposed action and the no-action alternative (i.e., denial of the renewal) are similar, there is no need to further evaluate alternatives to the proposed action.

Finding of no Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment to NRC Source Material License SUA-1473. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted. The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Quivira Mining Company, 6305 Waterford Boulevard, Suite 325, Oklahoma City, OK 73118;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c). Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 22nd day of April 1997.

For the Nuclear Regulatory Commission.

Charles L. Cain,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-10974 Filed 4-28-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of April 28, May 5, 12, and 19, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 28

Friday, May 2

9:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public meeting) (Contact: John Larkins, 301-415-7360)

10:30 a.m. Meeting with Nuclear Safety Research Review Committee, (NSRRC) (Public meeting) (Contact: Jose Cortez, 301-415-6596)

Noon Affirmation Session (Public meeting) (if needed)

Week of May 5

Tuesday, May 6

2:00 p.m. Briefing on PRA Implementation Plan (Public meeting) (Contact: Gary Holahan, 301-415-2884)

Wednesday, May 7

2:00 p.m. Briefing on IPE Insight Report (Public meeting)

3:30 p.m. Affirmation Session (Public meeting) (if needed)

Thursday, May 8

9:00 a.m. Meeting with Advisory Committee on Medical Uses of Isotopes (ACMUI) (Public meeting) (Contact: Larry Camper, 301-415-7231)

Week of May 12

Tuesday, May 13

2:00 p.m. Briefing by National and Wyoming Mining Associations (Public meeting)

Wednesday, May 14

2:00 p.m. Briefing on Status of Activities with CNWRA and HLW Program (Public meeting)

Thursday, May 15

10:00 a.m. Briefing on Status of HLW Program (Public meeting)

2:00 p.m. Briefing on Performance Assessment Progress in HLW, LLW, and SDMP (Public meeting)

3:30 p.m. Affirmation Session (Public meeting) (if needed)

Week of May 19

Tuesday, May 20

11:30 a.m. Affirmation Session (Public meeting)

2:00 p.m. Meeting with Advisory Committee on Nuclear Waste (Public meeting) (Contact: John Larkins, 301-415-7360)

Wednesday, May 21

10:00 a.m. Briefing on Program to Improve Regulatory Effectiveness (Public meeting)

* The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97-11231 Filed 4-25-97; 2:47 pm]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-07102]

Shieldalloy Metallurgical Corp. (Newfield, New Jersey); Director's Decision Under 10 CFR § 2.206

I. Introduction

In an undated letter addressed to U.S. Nuclear Regulatory Commission ("NRC") Chairman Shirley Jackson and received on October 11, 1996, Sherwood Bauman, Chairperson of Save Wills Creek ("Petitioner"), requested that the NRC take action with respect to NRC licensee Shieldalloy Metallurgical Corporation ("SMC"), of Newfield, New Jersey. The Petitioner requested, pursuant to 10 CFR § 2.206, that the NRC modify SMC's license to allow only possession of radioactive material for the express purpose of decommissioning and decontaminating its Newfield facility, and that current operations resulting in additional radioactive material being stored at the site be immediately halted. The Petitioner cites the lack of adequate financial assurance, as required by 10 CFR § 40.36, as the basis for his request.

The Petitioner submitted a follow-up letter, addressed to the NRC Executive Director for Operations and dated February 7, 1997, reiterating the above request. In this letter, the Petitioner stated that SMC is attempting to reclassify wastes as potential resources for which the Petitioner believes there is no viable market. Furthermore, the Petitioner concludes that without a viable market and the resultant inadequate financial assurance for the company, SMC is jeopardizing the health and safety of the local Newfield community.

By letter dated November 14, 1996, I formally acknowledged receipt of the Petitioner's original correspondence and informed the Petitioner that his request was being treated pursuant to 10 CFR § 2.206 of the Commission's regulations. A notice of receipt of the petition was published in the **Federal Register** on Thursday, November 21, 1996 (61 FR 59251). By letter dated March 7, 1997, I formally acknowledged receipt of the Petitioner's supplementary letter.

I have evaluated the Petitioner's request and have determined that, for the reasons stated below, the Petition is granted in part and denied in part.

II. Background

At its Newfield, New Jersey facility, SMC processes pyrochlore, a concentrated ore containing columbium (niobium), to produce ferro-columbium, an additive/ conditioner used in the production of specialty steel and superalloys. The pyrochlore contains, by weight, more than 0.05 percent natural uranium and thorium, which are source materials and therefore require a NRC license pursuant to 10 CFR Part 40. SMC operates this process under the authority of NRC Source Material License No. SMB-743.

During the manufacturing process, the radioactive materials are concentrated in both high-temperature slag and baghouse¹ dust, which are then stored in the source material storage yard at the site. The slag contains most of the licensed material. In a letter to the NRC, dated June 24, 1996, the licensee indicated that the concentration of source material in the baghouse dust is, on average, less than the "unimportant

quantity" source material threshold of 0.05 percent by weight, as described in 10 CFR § 40.13(a),² and need not be treated as licensed material after it is removed from the site. The licensee has stored source material in this manner at the Newfield site since the 1950s and has accumulated approximately 295,000 kilograms (kg) of thorium and 40,000 kg of uranium at the site. SMC's current license limits SMC to 303,050 kg of thorium and 45,000 kg of uranium. That license expired on July 31, 1985, and SMC has continued operations in accordance with its existing license under the timely renewal provisions of 10 CFR § 40.42(a). The SMC site has been included in the NRC's Site Decommissioning Management Plan because it contains a large volume of contaminated material for which disposal may prove difficult.

The primary issue significantly delaying SMC's license renewal is SMC's ability to meet the financial assurance requirements of 10 CFR § 40.36³. To meet its obligation under § 40.36, SMC originally provided the NRC with a Letter of Credit, dated July 23, 1990, in the amount of \$750,000 to serve as financial assurance pending completion of the NRC's review of SMC's decommissioning funding plan.

In September 1993, SMC notified the NRC that it had filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. At that time, SMC also informed the NRC that it could not provide an acceptable decommissioning funding plan for reaching unrestricted release limits⁴ by disposing of all stored material in a licensed disposal facility. Despite SMC's filing for bankruptcy and continued efforts to satisfy the NRC's financial assurance requirements, SMC

has and continues to maintain public health and safety at its Newfield facility during continued operations under its existing license. Therefore, the status of current public health and safety protection is not at issue in this case.

By letter dated December 12, 1995, SMC submitted a new decommissioning funding plan to the NRC, proposing that the licensed slag be exported for use in steel production. The decommissioning funding plan also proposes that SMC sell the baghouse dust domestically (for cement manufacturing) without restriction because it is, on average, less than the 10 CFR § 40.13(a) "unimportant quantity" threshold described above. Finally, under the new decommissioning funding plan, SMC would decontaminate and decommission the remainder of the Newfield site, after off-site shipment of the aforementioned products and in accordance with the NRC's unrestricted release criteria, by disposing of remaining contaminated structures and soils in a licensed disposal facility.

In December 1994, SMC submitted an application to the NRC for a license to export a test shipment of slag to a steel mill in Trinidad. The NRC's review of the export license application became moot in early 1996 when public concern in Trinidad led SMC's potential customer to reconsider purchasing the material. SMC has unofficially indicated to the NRC that it is currently negotiating with other steel mills and will likely revise its export application for export to steel mills in one or more countries during 1997.

By letter dated June 24, 1996, SMC requested permission for the proposed domestic sale and transfer of the baghouse dust to unlicensed persons; the staff is currently reviewing the request.

III. Discussion

The Petitioner cites the lack of adequate financial assurance, as required by 10 CFR § 40.36, as the basis for his request. The Petitioner states that SMC is attempting to reclassify wastes as potential resources for which the Petitioner believes there is no viable market. Furthermore, the Petitioner concludes that lacking both a viable market and adequate decommissioning funding, SMC is jeopardizing the health and safety of the local Newfield community. To support his request, the Petitioner presents three factors he believes are relevant to his petition:

1. The Petitioner stated that the NRC's draft environmental impact statement, dated July 1996, for SMC's Cambridge facility (docket 040-8948), discussed an identical proposal to sell slag from the

² Under § 40.13(a), any person is exempt from the requirements of 10 CFR Part 40 and from the requirements for a license under Section 62 of the Atomic Energy Act to the extent that such person receives, possesses, uses, transfers or delivers source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than 0.05 percent of the mixture, compound, solution, or alloy.

³ The NRC's financial assurance requirements in 10 CFR § 40.36, as pertain to SMC's Newfield license, state that:

(a) Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan (DFP) as described in paragraph (d) of this section.

(d) Each DFP must contain a cost estimate for decommissioning and a description of the method (such as a prepayment, a surety, or an external sinking fund as described in § 40.36(e)) of assuring funds for decommissioning.

⁴ The NRC's guidance for unrestricted release limits can be found in "Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations" (October 23, 1981; 46 FR 52061).

¹ The baghouses contain filters comprised of cloth (or similar material) arranged in a tubular fashion in an enclosed housing. The effluent stream from the production area is blown through the filter bags, which trap the particulates on the collected material that builds up on the bags. As the buildup of material on the bags increases, so too does resistance to flow. For that reason, the baghouse filters are equipped with shaking/vibrating devices to remove the collected dust and re-condition the bags. The rated efficiency of the filters used in the D-111 baghouses is over 99 percent.

Cambridge site. As part of that discussion, the Petitioner noted that the NRC staff stated that SMC could not actually demonstrate that SMC's proposal for sale of ferro-columbium slag at the Cambridge site is a workable and viable option.

2. The Petitioner also stated that to prove the lack of marketability for sale of ferro-columbium, the NRC could determine whether or not potential customers in the United States would require a license to possess the material in question. The Petitioner believes that few, if any, domestic companies will be willing to obtain any NRC licenses that may be required for the use of this material.

3. Finally, the Petitioner stated that the only customer SMC has been able to locate, to date, was not in the United States, but in an under-developed third world country with little protection. After adverse publicity in the affected country, the facility purchasing the material canceled its order, and SMC has been unable to develop a new market during the succeeding 3 years.

A. Regulatory Framework.

1. Summary of 10 CFR § 40.36

Under 10 CFR § 40.36, a licensee is required to submit a detailed decommissioning funding plan, describing both the plan for decommissioning the site upon termination of operations and the method of assuring funds to complete the actions described in the decommissioning plan. The purpose of this requirement is to assure that a licensee possesses sufficient funds to eventually decontaminate and decommission the site to a level at which public health and safety is assured. This rule was originally implemented in 1990. The NRC generally requires its licensees to provide financial assurance sufficient to decommission a site for unrestricted release consistent with the definition of decommissioning in 10 CFR § 40.4. To meet these unrestricted release criteria, licensees generally transfer any radioactive waste generated during decommissioning to a licensed disposal facility. However, in some cases the staff has used its discretion to accept lesser amounts of financial assurance, based on a finding of the acceptability of alternative approaches (e.g., *in-situ* disposal) or a binding commitment (such as a license condition or NRC order) from the licensee to pursue alternative approaches. In cases that involve a major federal action and where the potential environmental impacts of the alternative approaches

may be significant, the NRC prepares an Environmental Impact Statement (EIS) and Record of Decision in accordance with the requirements of 10 CFR Part 51.

2. Application of 10 CFR § 40.36 to License No. SMB-743

Prior to 1990, the NRC did not require financial assurance for decommissioning from its licensees. During the period prior to the rule's implementation, SMC amassed large quantities of slag at the site contaminated with source material. Because SMC was in timely renewal at the time, SMC was only required to provide certification of financial assurance for \$750,000 to meet the financial assurance requirements pursuant to 10 CFR § 40.36(c)(2).

In 1993, after SMC notified the NRC that it could not provide adequate financial assurance to meet unrestricted release limits, the NRC began to develop an EIS for the decommissioning of the SMC Newfield site in response to the licensee's request to dispose of the contaminated slag and baghouse dust *in situ*. The NRC suspended EIS development in 1995 when the licensee informed the NRC of its intent to transfer the slag for use in steel smelting and the baghouse dust for other, non-licensed purposes.

In December 1995, SMC submitted a modified decommissioning funding plan. That plan proposes that the licensed slag be exported for use in steel production as a fluxing agent that also removes impurities from the steel mixture, the result being a derived slag containing the impurities including the source material. This derived slag would be sold as an aggregate with no restrictions, because the concentrations of uranium and thorium would be, on average, well below the NRC's 10 CFR § 40.13(a) "unimportant quantity" limit. The concentration of source material in the derived slag is less than in SMC's slag because it is diluted with other inert materials (such as lime and alumina) during the smelting process. The latest decommissioning funding plan also proposes that SMC sell the baghouse dust domestically for other purposes (e.g., cement manufacturing) without restriction because the contaminated baghouse dust would also be, on average, less than 0.05 percent of source material by weight. By letter dated June 24, 1996, SMC requested permission for the proposed domestic sale of the baghouse dust; the staff is currently reviewing the request. Finally, under the new decommissioning funding plan, SMC would decontaminate and decommission the

remainder of the Newfield site to conform to the NRC's unrestricted release limits; contaminated structures, soils, and radioactive wastes generated during decontamination and decommissioning would be sent to a licensed disposal facility. SMC calculated the cost for executing the decommissioning activities described in the 1995 modified decommissioning plan to be slightly less than \$750,000.

The NRC has held a Letter of Credit for \$750,000 from SMC, pursuant to 10 CFR § 40.36(c)(2), since 1990. On February 26, 1997, at SMC's request, the NRC drew upon the Letter of Credit and is currently holding the funds in trust.⁵ Because SMC has in place the required decommissioning funding plan and a financial assurance mechanism which encompasses the cost estimates to perform the actions proposed in the decommissioning funding plan, SMC is considered to be in compliance with 10 CFR § 40.36 until such time as the NRC determines whether the submitted decommissioning funding plan is acceptable (as discussed below). Therefore, the issue being decided herein is whether the licensee's current decommissioning funding plan is acceptable.

B. Acceptability of Decommissioning Funding Plan

In SECY-96-210, dated October 1, 1996, the NRC staff informed the Commission of its concerns regarding the acceptability of SMC's decommissioning funding plan and described its plan to resolve the associated issues. As part of its plan, the staff informed the Commission of its intent to permit interim acceptance of the decommissioning funding plan to allow renewal of the license; however, the staff's plan also requires that SMC present adequate evidence (e.g., obtaining NRC approval of an export license application) regarding the marketability of the slag within one year after renewal of License SMB-743. If SMC cannot provide such evidence, the NRC will reconsider the acceptability of the licensee's decommissioning funding plan. This could include requiring the plan's revision to include a different approach for decommissioning and disposal of the radioactive slag (e.g., *in-situ* disposal). The NRC transmitted a copy of SECY-96-210 to the Petitioner as an enclosure to the November 14, 1996 acknowledgement letter.

⁵To facilitate its planned exit from bankruptcy proceedings and with the Bankruptcy Court's approval, SMC requested by letter dated October 25, 1996, that the NRC draw upon the existing Letter of Credit.

In the Petitioner's February 7, 1997 supplementary letter, the Petitioner elaborates upon his belief that the current decommissioning funding plan should be considered unacceptable and the licensee is not in compliance with the regulations in 10 CFR § 40.36 by stating that SMC's proposed plans to disposition the slags are neither technologically nor financially viable.

The Petitioner argues that the NRC has already stated that the sale of ferro-columbium slag is not viable, as referenced in the *Draft Environmental Impact Statement on Decommissioning of the Shieldalloy Metallurgical Corporation, Cambridge, Ohio* (NUREG-1543, July 1996) (Draft EIS). This is not correct.

The respective viabilities of the Newfield and Cambridge ferro-columbium slags for use in steel production are considered by the NRC to be different in each case. As stated below, the Newfield ferro-columbium slag was produced using the same process that produced a previously marketed Newfield ferro-vanadium slag, demonstrating that the process using the Newfield ferro-columbium slag appears to be viable. In contrast, the Cambridge ferro-columbium slag was produced using a different process and different feedstock materials. Consequently, the metallurgical properties of the Cambridge slags have not yet been demonstrated to be technologically viable. For this reason, the export sale alternative was not included for consideration in the Draft EIS for decommissioning of the Cambridge site.

With regard to the previously marketed ferro-vanadium slag, SMC delivered, on average, 7000 tons of ferro-vanadium slag per year to the domestic steel industry from 1991 to 1995, with the highest annual amount reaching 9000 tons. By comparison, SMC currently stores approximately 70,000 tons of ferro-columbium slag at its Newfield site. The licensed ferro-columbium slag at the Newfield site was produced in a manner similar to the ferro-vanadium slag. SMC's extensive metallurgical evaluations indicate that the ferro-columbium slag has metallurgical properties relating to the proposed steel process that are similar, if not superior, to relevant properties of the ferro-vanadium slag.

The NRC staff acknowledges the Petitioner's statement that the domestic use of ferro-columbium slag would likely require an NRC or Agreement State license for possession and use, thus possibly constraining domestic commercial interest in the product and thereby impacting the financial viability of the slag product. However, SMC is

marketing the material to international locations where regulatory conditions may be less of a factor in determining the product's financial viability. As part of any international export application and prior to issuance of an export license, the NRC will inform the importing government of the proposed importation and use of the product containing the source material, in accordance with the International Atomic Energy Agency's Code of Practice on the International Transboundary Movement of Radioactive Waste.

Finally, the Petitioner argues that the only potential customer SMC has been able to locate, to date, has been in Trinidad. Because of internal country concerns, the customer purchasing the material canceled its order, and SMC has been unable to develop a new market during the succeeding years, thus significantly decreasing viability of the product. The NRC agrees with the Petitioner that this raises a concern as to the viability of the proposed decommissioning funding plan and therefore grants the Petitioner's request in part. The NRC intends to require, in the form of a license condition as part of any future license renewal, that SMC provide additional proof (in the form of an NRC-approved export application) of the viability of the proposed disposition method within one year of the license's renewal. If such proof is not forthcoming within the time limit, the NRC staff plans to issue an order requiring the submission of a new decommissioning funding plan along with appropriate mechanisms for financial assurance. Furthermore, the NRC will include a condition in any renewed SMC license requiring SMC to provide financial assurance commensurate in value for the costs of offsite disposal for future source material possession increases. These two conditions are intended to prevent SMC from continuing to accumulate licensed material at the site in perpetuity without adequate financial assurance.

IV. Conclusion

The staff has carefully considered the request of the Petitioner. For the reasons discussed above, I conclude that no substantial public health and safety concerns warrant NRC action concerning the request. However, because the staff is proposing to impose certain restrictions on the licensee for reasons similar to those presented by the Petitioner, I grant the Petitioner's request to that extent and deny it in other respects.

A copy of this Decision will be placed in the Commission's Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room for the named facility. A copy of this Decision will also be filed with the Secretary for the Commission's review as provided in 10 CFR § 2.206(c) of the Commission's regulations.

As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 15 day of April 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-10975 Filed 4-28-97; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 6e-2, SEC File No. 270-177,

OMB Control No. 3235-0177

Rule 22d-1, SEC File No. 270-275,

OMB Control No. 3235-0310

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections of information:

Rule 6e-2 [17 CFR 270.6e-2] under the Investment Company Act of 1940 ("Act") is an exemptive rule which permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration requirements under the Act, among others, on conditions that it comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e-2 provides a separate account with an exemption from the registration

provisions of section 8 of the Act if the account files with the Commission Form N-6EI-1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements and reports to contract holders about actions taken under those exemptions.

In regard to the foregoing, Rule 6e-2 provides an exemption from section 17(f) of the Act. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) of Rule 6e-2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to Rule 6e-2.

Since 1988, there have been no filings under paragraph (b)(9) of Rule 6e-2 by management accounts. Further, all post-effective amendments accounts under Rule 6e-2 have been structured as unit investment trusts and are thus not subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 1988, there has been no burden to the industry regarding the information collection requirements of paragraph (b)(9) of Rule 6e-2.

Rule 22d-1 [17 CFR 270.22d-1] provides registered investment companies that issue redeemable securities ("funds") an exemption from section 22(d) of the Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per fund of approximately 15 minutes, so that the total annual burden for the approximately 1,865 funds that might rely on the rule is estimated to be 466 hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory

Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 22, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-10942 Filed 4-28-97; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 6, 1997 [62 FR 5663].

DATES: Comments must be submitted on or before May 29, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Jordan, M-61, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-4265.

SUPPLEMENTARY INFORMATION:

Office of the Secretary (OST)

Title: Transportation Acquisition Regulation (TAR).

OMB Control Number: 2105-0517.

Affected Public: Individuals or households and business or other for-profit organizations.

Abstract: The requested extension of the approved control number covers forms DOT F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.44, DOT F 4220.45, DOT F 4220.46, and Form DD 882. In addition, the control number includes an amended request to obtain data associated with acquisitions for training services.

Need: The Transportation Acquisition Regulation (TAR) 48 CFR 1213.70, 1237.70, 1252.237-71, and 1252.237-72 requires contracting officers to obtain and evaluate, qualification data and other pertinent information when it is necessary to determine whether offerors

have the capability to perform training services under a proposed contract.

Annual Estimated Burden: 22,062.*

* The annual estimated burden has been reduced from 57,167 hours as a result of the Federal Aviation Administration system being exempt from the collection requirements of the TAR.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 22, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97-11011 Filed 4-28-97; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Sunday, June 1, 1997. The following designations are made for each item: (A) is an "action" item; (I) is an "information item;" and (D) is a "discussion" item. The agenda includes the following: (1) Call to Order and Introductions (I); (2) Statements of Anti-Trust Compliance and Conflict of Interest (A); (3) Approval of Last Meeting's Minutes (A); (4) Special FHWA Report (I&D); (5) Federal Reports (I&D); (6) President's Report—(a.) 1997 Priority Objectives, (b.) Identity Campaign, (c.) ITS America Association; (7) DSRC Initiative Update (I&D); (8) Standards Needs Timeline (I&D); (9) European Update (I&D); (10) Annual Meeting and World Congress Update (I&D); (11) Sunset-Sunrise Task Force Report (A); (12) Roundtable Discussion of Committee and Task Force Activities (I&D); (13) Coordinating Council Retreat Plans (Wed.-Thurs., August 6-7, 1997

in San Diego, California) (I&D); (14) Other Business.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Sunday, June 1, 1997, from 1:00 p.m. to 5:00 p.m. (Eastern Standard time)

ADDRESSES: Sheraton Washington Hotel, 2660 Woodley Road, N.W., Washington, D.C. 20008. Phone: (202) 328-2000. Fax: (202) 234-0015.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484-4130, or by FAX at (202) 484-3483. The DOT contact is Mary Pigott, FHWA, HVH-1, Washington, D.C. 20590, (202) 366-9230. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays. (23 U.S.C. 315; 49 CFR 1.48)

Issued on: April 24, 1997.

Whitey Metheny,

ITS Joint Program Office.

[FR Doc. 97-10985 Filed 4-28-97; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Wednesday, June 4, 1997. It will be held in conjunction with the ITS America Annual Meeting. The meeting begins at 1 p.m. with an Administrative Business session (Voting Board Members and Key Staff Only). The letter designations that follow each item mean

the following: (I) is an "information item;" (A) is an action item; (D) is a discussion item. This meeting includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements (I); (2) Review and Approval of Previous Meeting's Minutes (A); (3) Review and Acceptance of Election Results: Installation of New Board Members (A); (4) Election of New Officers of the Board of Directors (A); Transfer of gavel from outgoing Chairman Robert MacLennan to New Board Chair; (5) Report of the Executive Committee (I&D); (6) Report on Membership Development (I&D); (7) Report of Administrative Policy and Finance Committee (I); (8) Other Business.

The General Session begins at 2 p.m. and is open to all members and observers. The following items will be addressed: (9) Welcome and Review of ITS America Antitrust Policy and Conflict of Interest Statements (Introduction of New Board Members and New Officers of the Board) (I); (10) Federal Report (I&D); (11) Special FHWA Report (I&D); (12) Appointment of Coordinating Council Members (A); (13) Coordinating Council Report (I&D); (14) State Chapters Council Report (I&D); (15) President's Report (I&D); (16) Report of Board Special Task Force on Infrastructure Priorities (I&D); (17) Final Update on National Investment & Market Analysis (I&D); (18) Seventh Annual Meeting Update and Report of the World Congress (I); (19) New Board of Directors Committee Appointments (I); (20) Board Emphasis Areas (I/D); (21) Plans for Board of Directors Retreat (August 11-12, 1997); (22) Other Business: (a.) Report on ITS in Japan and (b.) Report on the NAHS Demonstration; (23) Adjournment until August 11, 1997 Retreat and August 12, 1997, Board of Directors Meeting in San Diego, California.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Wednesday, June 4, 1997, from 1:00 p.m.-5:00 p.m.

ADDRESSES: Sheraton Washington Hotel at 2550 Woodley Road, N.W. in

Washington, D.C. 20008. Phone: (202) 328-2000 and Fax: (202) 234-0015.

FOR FURTHER INFORMATION CONTACT:

Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484-4130 or by FAX at (202) 484-3483. The DOT contact is Mary C. Pigott, FHWA, HVH-1, Washington, D.C. 20590, (202) 366-9230. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays. (23 U.S.C. 315; 49 CFR 1.48)

Issued on: April 24, 1997.

Whitney Metheny,

ITS Joint Program Office.

[FR Doc. 97-10986 Filed 4-28-97; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Section 5a Application No. 70 (Amendment No. 11)]

Western Motor Tariff Bureau, Inc.—Agreement

AGENCY: Surface Transportation Board.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: Western Motor Tariff Bureau, Inc. (WMTB), has filed a petition seeking approval of minor amendments to its collective ratemaking agreement, which was approved under former section 49 U.S.C. 10706(b), the predecessor to 49 U.S.C. 13703. The amendments would modify WMTB's bylaws as follows: (1) reduce the notice members must provide to WMTB upon their withdrawal from the rate bureau from 60 days to 45 days; (2) reduce the notice period for termination for failure to pay dues and fees from 90 days to 45 days after the member has received notice of delinquency and upon expiration of the 30-day period to correct the delinquency; (3) divide the membership into two classes of carriers, "mainland membership" and "Hawaii membership;" (4) provide that annual meetings of the membership may be held in Hawaii in addition to meetings held in Los Angeles County, CA; and (5) provide for separate fee arrangements for member carriers performing intrastate service within the State of California.

In addition, a new Article XVII would be added to WMTB's bylaws, which

would: (1) provide the procedures for the adoption of a plan of partial redemption or partial liquidation of corporate assets upon recommendation of the board of directors and an affirmative membership vote; (2) provide the procedures for the adoption of a plan for complete liquidation and dissolution upon the recommendation of the board of directors and an affirmative vote of the membership; and (3) provide the formula for distribution to member carriers which were members during the 12-month period prior to the adoption of a plan of partial or complete liquidation.

DATES: Comments from interested persons are due May 30, 1997. Replies are due June 24, 1997. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments and any reply will be considered, and the Board will issue a further decision.

ADDRESSES: An original and 10 copies of comments referring to STB Section 5a Application No. 70 (Amendment No. 11) should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. A copy of any comments filed with the Board must also be served on applicant's representative: Leo Franey, 1920 N Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006.

Telephone: (202) 289-4357.
[Assistance for the hearing impaired is available through TDD services (202) 565-1695.]

Decided: April 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

[FR Doc. 97-11031 Filed 4-28-97; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33380]

The Indiana Rail Road Company— Trackage Rights Exemption— Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant trackage rights to The Indiana Rail Road Company (INRD) between INRD's connection with Conrail's Indianapolis Belt Running Track (Belt Track) near Raymond Street, Indianapolis, IN, at approximately milepost 5.3 and the end of Conrail's Belt Track at the connection with the former Norfolk and Western Railway Company at approximately milepost 13.5, a distance of approximately 8.2 miles.¹

In its notice, INRD stated its intention that the trackage rights would become effective on April 20, 1997. On April 18, 1997, Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to reject INRD's notice of exemption because the notice, filed on April 14, 1997, purported to give only 6 days' notice of the transaction when the Board's rules require that the notice be filed with the Board at least 7 days prior to consummation of an exempt transaction. See 49 CFR 1180.4(g). INRD replied on April 22, 1997, in opposition to the petition to reject. INRD argues that the trackage rights should be allowed to become effective on April 20, 1997, because it mailed its notice of exemption on April 10, 1997, and that it "could reasonably assume that the Notice of Exemption would get from Jacksonville, Florida to Washington, D.C. in three days via first-class U.S. mail service."

The notice of exemption was not received by the Board until Monday, April 14, 1997, and hence was not filed

until April 14, 1997.² The earliest the exemption could take effect, therefore, was Monday, April 21, 1997, and INRD's intended consummation date of April 20, 1997, was premature. While this is not a basis for rejection, UTU-IL is correct that INRD could not lawfully consummate the trackage rights transaction that is the subject of its notice until April 21, 1997.

If INRD consummated the trackage rights transaction (for which it invoked the class exemption) prior to April 21, 1997, it will need to pursue after-the-fact relief by means of a petition for exemption that would permit effectiveness of the exemption sooner than 7 days after the filing of its notice of exemption. The petition should be filed with an appropriate filing fee.³

The purpose of the trackage rights is to allow INRD to continue to interchange with Norfolk Southern Railway Company, at milepost 13.5, and with CSXT near State Street, at approximately milepost 8.9.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33380, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Charles M. Rosenberger, Esq., 500 Water Street, Jacksonville, FL 32202.

Decided: April 23, 1997.

² The April 14, 1997 date of receipt at the Board is controlling. Moreover, there is no merit to INRD's argument that it could reasonably have expected a document mailed via first class in Jacksonville on Thursday, April 10, 1997, to have been received for filing at the Board in Washington, D.C., on or before April 13, 1997. If a document filed by mail had been received by the Board on April 13 (a Sunday) or even on April 12 (a Saturday), it would not have been processed in any event until the next business day (Monday, April 14, 1997).

³ See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—1997 Update*, STB Ex Parte No. 542 (Sub-No. 1) (STB served Jan. 23, 1997). Specific questions concerning filing fees should be directed to the Office of the Secretary, (202) 565-1650.

¹ INRD, Conrail, and CSX Transportation, Inc. (CSXT), are surviving parties to an agreement dated September 20, 1883, whereby all three maintained the right to operate over property owned by the former Indianapolis Union Railway Company (IU). IU's properties were conveyed to Conrail in 1976 by the United States Railway Administration. The track over which INRD operates consists of Conrail's 13.5-mile Belt Track and approximately 1.1 miles in downtown Indianapolis through the Indianapolis Union Station area. The surviving parties have agreed to terminate the 1883 agreement because many of its provisions have become obsolete. INRD has filed a notice of exemption to discontinue its trackage rights over the remainder of the Belt Track between mileposts 0.0 and milepost 5.3, as well as over the 1.1 miles of trackage in the Indianapolis Union Station area in *The Indiana Rail Road Company—Discontinuance of Trackage Rights Exemption—in Marion County, IN*, STB Docket No. AB-295 (Sub-No. 3).

By the Board, David M. Konschnik,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 97-11030 Filed 4-28-97; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33389]

The Land Conservancy of Seattle and King County—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

The Land Conservancy of Seattle and King County, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 12.45 miles of rail line from The Burlington Northern and Santa Fe Railway Company between milepost 7.30, near Redmond, and milepost 19.75, at Issaquah, in King County, WA.

The transaction was scheduled to be consummated on or after the April 22, 1997 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33389, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Charles H. Montange, 426 NW 162d Street, Seattle, WA 98177.

Decided: April 23, 1997.

By the Board, David M. Konschnik,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 97-11029 Filed 4-28-97; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33391]

South Carolina Central Railroad Inc., Carolina Piedmont Division—Acquisition Exemption—Greenville & Northern Railway

South Carolina Central Railroad Inc., Carolina Piedmont Division (CPD), a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate 11.8 miles of rail line from the Greenville & Northern Railway (G&NR) between milepost 0.0, at Greenville, SC, and milepost 11.8, at Traveler's Rest, SC. In addition, CPD will acquire, by assignment, G&NR's overhead trackage rights over 1.65 miles of a rail line owned by CSX Transportation, Inc. between milepost AKJ-591.53 and milepost AKL-57.35, in Greenville, SC.

The transaction is expected to be consummated on or shortly after April 24, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33391, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK LLP 1455 F Street, N.W., Washington, DC 20005.

Decided: April 23, 1997.

By the Board, David M. Konschnik,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 97-11033 Filed 4-28-97; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-406 (Sub-No. 7X)]

Central Kansas Railway, Limited Liability Company—Abandonment Exemption—in Barton, Ellsworth and Rice Counties, KS

AGENCY: Surface Transportation Board.
ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 USC 10903 the abandonment by Central Kansas Railway, Limited Liability Company (CKR) of a 53.2-mile portion of its Little River Subdivision from milepost 577.1 near Lyons to milepost 594.1 near Lorraine, thence from milepost 20.7 near Lorraine to milepost 56.9 near Galatia, in Barton, Ellsworth and Rice Counties, KS, subject to standard labor protective conditions and an historic preservation condition.

DATES: The exemption will be effective May 29, 1997 unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA under 49 CFR 1152.27(c)(2) must be filed by May 9, 1997; petitions to stay must be filed by May 14, 1997; requests for a public use condition under 49 CFR 1152.28 and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by May 19, 1997; and petitions to reopen must be filed by May 27, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB-406 (Sub-No. 7X) must be filed with: Surface Transportation Board, Office of the Secretary, Case Control Unit, Mercury Building, 1925 K Street, NW, Washington, DC 20423-0001; a copy of all pleadings must be served on petitioner's representative: Michael J. Ogborn, Manager, Central Kansas Railway, Limited Liability Company, 252 Clayton Street, 4th Floor, Denver, CO 80206.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC News & Data, Inc., 1925 K Street, NW, Suite 210, Washington, DC 20006 [Telephone: (202) 289-4357]. [Assistance for the hearing impaired is available through TDD services (202) 565-1695.]

Decided: April 15, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.
Vernon A. Williams,
Secretary.
[FR Doc. 97-11027 Filed 4-28-97; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-43 (Sub-No. 170X)]

**Illinois Central Railroad Company—
Abandonment Exemption—in Forrest
and Lamar Counties, MS**

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 1.94 miles of its line of railroad, known as the Hattiesburg-Varnado Switch, between milepost MH-3.06 near Hattiesburg, and milepost MH-5.00 near Varnado Switch, in Forrest and Lamar Counties, MS.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (Environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 30, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and

trail use/rail banking requests under 49 CFR 1152.29³ must be filed by May 12, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 20, 1997, with: Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Anne E. Keating, General Solicitor, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, 20th Floor, Chicago, IL 60611.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 5, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IC's filing of a notice of consummation by April 30, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: April 22, 1997.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 97-11032 Filed 4-28-97; 8:45 am]

BILLING CODE 4915-00-P

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$900. See 49 CFR 1002.2(f)(25).

³ The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 105X)]

**Union Pacific Railroad Company—
Abandonment Exemption—in Kane
County, IL**

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts, from the prior approval requirements of 49 U.S.C. 10903 and from the offer of financial assistance requirements of 49 U.S.C. 10904, the abandonment by Union Pacific Railroad Company of a 2.8-mile segment of its East Elgin Industrial Lead between milepost 41.0 near Elgin Junction and milepost 43.8 near East Elgin, in Kane County, IL, subject to interim trail use/rail banking, public use, environmental, and standard employee protective conditions.

DATES: This exemption will be effective on May 29, 1997. Requests for trail use/rail banking under 49 CFR 1152.29 must be filed by May 9, 1997, petitions to stay must be filed by May 14, 1997, and petitions to reopen must be filed by May 27, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB-33 (Sub-No. 105X) must be filed with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of all pleadings must be served on petitioner's representative: Joseph D. Anthofer, General Attorney, 1416 Dodge St., Room 830, Omaha, NE 68179-0830.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, NW., Suite 210, Washington, DC 20006. Telephone: (202) 289-4357. [Assistance for the hearing impaired is available through TDD services (202) 565-1695.]

Decided: April 17, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

[FR Doc. 97-11028 Filed 4-28-97; 8:45 am]

BILLING CODE 4915-00-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects in the exhibit "Millennium of Glory: Sculpture of Angkor and Ancient Cambodia (see list), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition of the objects at the National Gallery of Art, Washington, DC, from on or about June 29, 1997, to on or about September 28, 1997, is in the national interest.

A copy of this list may be obtained by contacting Ms. Luisa Alvarez of the Office of the General Counsel of USIA. The telephone number is 202/619-6980, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: April 23, 1997.

Les Jin,

General Counsel.

[FR Doc. 97-11039 Filed 9-28-97; 8:45 am]

BILLING CODE 8230-01-M

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Finding of No Significant Impact for the Construction of Washington Lake Campground

AGENCIES: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

ACTION: Notice of Finding of No Significant Impact (FONSI).

SUMMARY: On March 20, 1997, Michael C. Weland, Executive Director of the Utah Reclamation Mitigation and Conservation Commission signed the Finding of No Significant Impact (FONSI) which documents the decision to fund construction of a campground in Summit County, Utah. The campground will be constructed near Washington Lake in the upper Provo River drainage as a recreation feature of the Bonneville

Unit of the Central Utah Project. The U.S. Forest Service documented the environmental effects of constructing the campground in a 1992 environmental assessment (EA). The Draft EA was developed with public input and the Final EA refined based upon public comment. The U.S. Forest Service issued a Finding of No Significant Impact (FONSI) on July 23, 1992 and a Supplemental FONSI on June 16, 1993 in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The Commission has reviewed the Forest Service EA, determined it adequate for the Commission's decision to fund the construction of the Proposed Action and has adopted the Forest Service EA and issued its own FONSI, in accordance with the Commission's NEPA Rule (43 CFR Part 10010.20).

The campground and associated features to be constructed are required by the 1988 Supplement to the Definite Plan Report (DPR) for the Bonneville Unit, Central Utah Project (CUP), and/or authorized by the Central Utah Project Completion Act of 1992 (Titles II through VI of Pub. L. 102-575), which also transferred responsibility for implementing this measure to the Commission.

Funding the U.S. Forest Service to construct the campground at Washington Lake meets the Commission's objectives of implementing the Washington Lake Campground mitigation program requirement and doing so in the least environmentally damaging manner. Of the alternatives analyzed under the EA, Alternative 3 which this decision implements, avoids impacts to wetlands by locating the campground in the area on the northeast edge of the lake instead of at the location of the original proposal on the southeast edge. The northeast location has fewer individual wetlands and allows for placement of campground facilities without any loss of wetlands. An existing wetland will be restored by closing and reclaiming one dispersed camping site and the access road to it which crosses a wetland meadow. Floating boardwalks will be used for any trails that cross wetlands. This represents a change from provisions in the Forest Service EA and FONSI that stated, "hardened footpaths will be developed across wetlands adjacent to proposed recreation sites" (see Alternative 3, Page IV-4 of the EA). With this change, no impacts to wetlands will occur.

The Biological Assessment for Washington Lake Campground completed July 7, 1992 includes a determination that after reviewing the

literature and an informal consultation with the U.S. Fish and Wildlife Service, "the Washington Lake Campground will not affect endangered or threatened species since they do not occur in the area." The Evaluation also makes determinations of "not likely to affect viable populations or habitat" of the following sensitive species: northern goshawk, flammulated owl, three-toed woodpecker, great grey owl, boreal toad and spotted frog. In each case, habitat surveys revealed either lack of suitable habitat in the area and/or evidence that the species use the area. This condition has not changed since 1992. The Utah State Historic Preservation Office, in an October, 1991 letter, concurred that no historic properties will be impacted by the project. No cultural resources were located during the survey of the project area. Based on consultation with the U.S. Army Corps of Engineers, with the addition of floating boardwalk for trails through the wetland areas, there will be no loss to wetlands and consequently no need for a 404 permit.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Ms. Joan Degiorgio, Planning Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84601, Telephone: (801) 524-3146.

Dated: April 14, 1997.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 97-11045 Filed 4-28-97; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92-463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Wednesday and Thursday, June 25-26, 1997, in room 230 of VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The meeting will convene at 9 am and adjourn at 5 pm on both days.

The purpose of the meeting is to review information relating to the health effects of exposure to ionizing radiation. The agenda for the first day will be devoted to administrative matters and a discussion of VA's regulatory

amendment to include prostate cancer and any other cancer as radiogenic diseases for the purposes of compensation under 38 CFR 3.311. The agenda for the second day will include planning future Committee activities and assignments of tasks among the members.

The meeting is open to the public on both days. Those who wish to attend should contact Kathy Collier or Steven Thornberry of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermong Avenue, NW., Washington, DC 20420, prior to June 18, 1997. Ms. Collier may be reached at 202-273-7203, and Mr. Thornberry at 202-273-7217.

Members of the public may submit written questions or prepared statements for review by the Advisory Committee in advance of the meeting. Submitted material must be received at least five (5) days prior to the meeting and should be sent to the attention of either Ms. Collier or Mr. Thornberry at the address given above. Those who submit material may be asked to clarify it prior to its consideration by the Advisory Committee.

Dated: April 22, 1997.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97-11056 Filed 4-28-97; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Women Veterans will be held on May 5-10, 1997, at the West Los Angeles VA Medical Center, 11301 Wilshire Blvd., West Los Angeles, CA 90073. The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs and activities administered by the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

Site visits to field facilities to review programs and services provided for women veterans will convene on May 5-7 from 8:30 a.m. until 5 p.m. and May 8 from 9:30 a.m. until 11:30 a.m. The schedule for site visits are as follows:

May 5

8:30 a.m. Dedication for Gardena Vet Center and Community-Based Center with Congresswoman Maxine Waters

1:30 p.m. West Los Angeles VA Medical Center, Women's Life-Cycle Health Education Center, Inpatient Ward Building 500

3:00 p.m. Salvation Army Homeless Program, Psychiatry Inpatient Ward, Dorm and Nursing Home Care Unit

May 6

8:30 a.m. Veterans Center, Culver City, CA

10:00 a.m. Comprehensive Center, Sepulveda VA Medical Center

2:00 p.m. Community Shelter Residence Hall, & Inglewood, West Los Angeles

May 7

8:30 a.m. West Los Angeles Medical Center, Senior Staff briefing

1:30 p.m. Veterans Affairs Regional Office

3:00 p.m. Los Angeles National Cemetery

May 8

9:30 a.m. West Los Angeles Medical Center, Women Veterans Coordinating Meeting

The full Committee will meet on May 8 from 2 p.m. until 6 p.m. and May 9 from 9 a.m. until 6 p.m. at the Summit Hotel Bel Air, Metro Conference Room, 11461 Sunset Blvd., Los Angeles, CA. An open forum will be held for the women veterans community on May 10 from 10:30 a.m. until 1:30 p.m. at the West Los Angeles VA Medical Center, Conference Room 1281.

All sessions will be open to the public. It will be necessary for those wishing to attend to contact Ms. Maryanne Carson, Department of Veterans Affairs, Washington, DC (phone 202-273-6193) prior to May 2, 1997.

Dated: April 23, 1997.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97-11057 Filed 4-28-97; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register

Vol. 62, No. 82

Tuesday, April 29, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. 28860; Amendment No. 187-7]

RIN 2120-AG17

Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace

Correction

In rule document 97-6980 beginning on page 13496 in the issue of Thursday, March 20, 1997 make the following corrections:

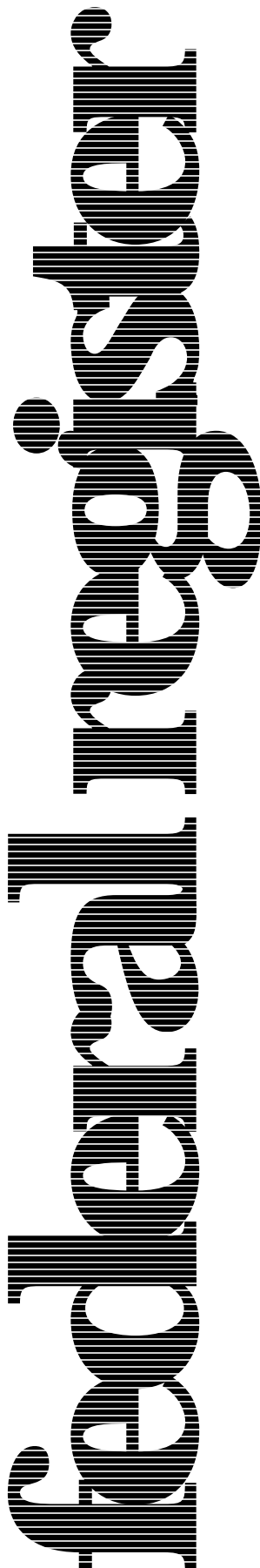
1. On page 13496, in the second column, fourth paragraph beginning in the second line “[*Insert date 120 after the date of publication*]” should read “July 18, 1997”.

2. On page 13499, in the first column, second paragraph in the 7th line, “offer” should read “defer”.

§ 187.15 [Corrected]

3. On page 13503, in the first column, in § 187.15(d), in the second line “party” should read “part”.

BILLING CODE 1505-01-D



Tuesday
April 29, 1997

Part II

Department of Agriculture

Rural Utilities Service

7 CFR Part 1767

Accounting Requirements for RUS
Electric Borrowers; Proposed Rule

DEPARTMENT OF AGRICULTURE**Rural Utilities Service****7 CFR Part 1767****Accounting Requirements for RUS Electric Borrowers**

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations on accounting policies and procedures for RUS electric borrowers. This proposed rule would amend the regulations pertaining to departures from the prescribed RUS Uniform System of Accounts (USoA), by allowing RUS borrowers to implement certain revenue and expense deferral plans without obtaining prior RUS approval. It would also institute activity-based costing (functional accounting) requirements for employee pensions and benefits, payroll taxes, and insurance and establish a new accounting interpretation that addresses the accounting requirements set forth in Statement of Financial Accounting Standards No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of, within the framework of the RUS USoA. This proposed rule will also establish uniform accounting procedures for the National Rural Electric Cooperative Association's (NRECA) Split-Dollar life insurance program, the NRECA Special Early Retirement program, and the automatic meter reading system developed by Hunt Technologies, Inc., global positioning systems, and radio-based remote meter reading systems. This proposed rule would also amend Accounting Interpretation No. 104 to record plant contributed by an RUS electric cooperative as an intangible asset.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than May 29, 1997.

ADDRESSES: Submit written comments to Ms. Roberta D. Purcell, Director, Program Accounting Services Division, Rural Utilities Service, Stop 1523, Room 2221, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, Washington, DC 20250-1523, telephone number (202) 720-9450. RUS requires a signed original and three copies of all comments (7 CFR part 1700). All comments received will be made available for inspection at room 2234 South Building during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Ms. Roberta D. Purcell, Director, Program

Accounting Services Division, Rural Utilities Service, Stop 1523, Room 2221, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, Washington, DC 20250-1523, telephone number (202) 720-9450.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this proposed rule will not have a significant economic impact on the substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the proposed rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572-0002.

Send questions or comments regarding this burden or any aspect of this information collection, including suggestions for reducing the burden to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Room 4034, Washington, DC 20250-1522.

National Environment Policy Act Certification

The Administrator, RUS, has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Program under numbers 10.850—Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees to governmental and nongovernmental entities from coverage under this order.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3, of the Executive Order.

Background

In order to facilitate the effective and economical operation of a business enterprise, adequate and reliable financial records must be maintained. Accounting records must provide a clear, accurate picture of current economic conditions from which management can make informed decisions in charting the company's future. The rate-regulated environment in which an electric utility operates causes an even greater need for financial information that is accurate, complete, and comparable with that of other electric utilities.

RUS, as a Federal lender and mortgagee, and in furthering the objectives of the Rural Electrification Act (RE Act) (7 U.S.C. 901 *et seq.*) has a legitimate programmatic interest and a substantial financial interest in requiring adequate records to be maintained. In order to provide RUS with financial information that can be analyzed and compared with the operations of other borrowers in the RUS program, all RUS borrowers must maintain financial records that utilize uniform accounts and uniform accounting policies and procedures. The standard RUS security instrument, therefore, requires borrowers to maintain their books, records, and accounts in accordance with methods and principles of accounting prescribed by RUS in the RUS USoA for its electric borrowers.

To ensure that borrowers consistently account for their financial operations and keep pace with the ever-changing environment in which they operate, as

well as apply the provisions of recent pronouncements of the Financial Accounting Standards Board, the USoA must be revised and updated as changes in the industry and generally accepted accounting principles occur. RUS is, therefore, proposing to revise Section 1767.13, Departures from the Prescribed RUS Uniform System of Accounts, to identify certain revenue and expense deferral plans that may be implemented without the prior written approval of RUS. When RUS adopted the requirements set forth in Section 1767.13 in 1993, RUS borrowers were implementing a variety of revenue and expense deferral plans, many without RUS knowledge or approval. Since the adoption of these requirements, RUS has been able to better determine the types of deferral plans being routinely adopted by its borrowers and the impact of these plans on loan security. History has shown that RUS has routinely approved the deferral of certain revenues and expenses and the accelerated amortization of previously deferred costs that have a minimal impact on loan security, provided that the information necessary for RUS to evaluate the action was submitted. In an effort to reduce paperwork requirements for both RUS and its borrowers, RUS is proposing to eliminate the requirement to obtain prior RUS approval to implement certain specific types of deferrals and accelerated amortizations of previously deferred expenses that have been routinely approved for all borrowers in the past.

With the issuance, by the Federal Energy Regulatory Commission (FERC), of Orders 888 and 889 on April 24, 1996 (61 FR 21540-21736; 21737-21854 (May 10, 1996) on open access, it is essential that rural electric cooperatives effectively and efficiently cost their products and services if they are to compete in an open market. Before products and services may be effectively priced in an open market, management must have reliable financial information concerning the actual cost of the products and services it provides. Costs, therefore, must be accumulated on a functional basis. Salaries, materials, and many other expenses incurred in utility operations are already accounted for on a functional basis. Employee pensions and benefits, payroll taxes, and insurance costs, however, are not, except to the extent that they are charged to construction and retirement activities. RUS is, therefore, proposing to revise its USoA to require borrowers to allocate employee pensions and benefits expense, as well as payroll taxes and insurance costs currently

recorded in Accounts 408, Taxes Other than Income Taxes; 924, Property Insurance; 925, Injuries and Damages; and 926, Employee Pensions and Benefits; to the appropriate functional operations, maintenance, and administrative expense accounts. Additionally, RUS is proposing to amend the operations, maintenance, and administrative expense accounts to which labor charges are accrued to reflect this activity-based costing methodology. Accordingly, RUS is also proposing to amend the accounting interpretations that address insurance and pensions and benefits expense to reflect this cost allocation procedure.

This rule also proposes to revise § 1767.41 by establishing a new accounting interpretation that addresses the provisions of the recently issued pronouncement of the Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of. RUS instructs its borrowers, with qualifying assets, as to the proper accounts to be used within the framework of the RUS USoA. Copies of Statements of Financial Accounting Standards may be obtained from the Order Department of the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116.

RUS is also proposing to adopt a new accounting interpretation that establishes the accounting policies and procedures for the NRECA Split-Dollar life insurance program and the NRECA Special Early Retirement (SERP) program. The Split-Dollar life insurance program and the Special Early Retirement program are benefits packages established by NRECA for borrowers to offer to their employees. The benefits provided under the Split-Dollar life insurance program consist of two components, the face value of the insurance policy which is payable to the employee's heirs and the accumulated cash surrender value. While the employee is the owner of the policy, the employee must sign a collateral assignment that gives the employer, the RUS borrower, an absolute right to the cash surrender value of the policy. Under the terms of this collateral assignment, the employee must reimburse the cooperative for the premiums paid upon the employee's termination of employment or attainment of the age of 62, if the employee wishes to maintain the insurance coverage. If death occurs prior to either of these events, the premiums paid to date by the borrower are deducted from the death benefits

payable to the policy beneficiary. The proposed accounting interpretation details the accounting journal entries necessary to record the cash surrender value of the policy and the expenses incurred by the borrower in providing the policy.

The SERP is a vehicle through which the cooperative may reduce the size of its workforce or replace more highly paid employees with lower paid entry level employees. If an employee covered by an NRECA retirement plan chooses to retire before the employee's normal retirement date, that employee would receive an actuarially reduced benefit. However, when a cooperative elects to offer a SERP, no such reduction is required. The proposed accounting interpretation details the accounting for the benefits package, itself, as well as the reduction in postretirement benefit costs that may result from an employee accepting the SERP.

This rule also proposes to establish an accounting interpretation for the automatic meter reading system developed by Hunt Technologies, Inc. The system transmits continuous information one way from the meter to a receiver located in the substation. The receiver constantly monitors each meter served by the substation. The data is then transmitted to the headquarters monitoring equipment via telephone line or an equivalent communication system. The proposed accounting records the various components of the system in the primary plant accounts based upon their functions.

This rule proposes to establish an accounting interpretation for Global Positioning Systems (GPS). The GPS is a worldwide radio-navigation system formed from a network of 24 satellites and their ground stations that utilities are using to update and modernize their system maps. GPS uses a system of satellites orbiting the earth to establish plant locations with pinpoint accuracy. By triangulating from three satellites and using radio signals to measure distances and locate items, system-wide maps can be created of the utility's service area. The proposed accounting records the various components of the system in the primary plant accounts based upon their functions.

This rule also proposes to adopt an accounting interpretation for Radio-based automatic meter reading systems. Radio-based automatic meter reading technology allows meters equipped with a low-power radio device called an ERT (Encoder, Receiver, Transmitter) to be read from a remote location. The ERT device "encodes" energy consumption and transmits this information to a radio transceiver equipped handheld

computer. The data collected and stored in the handheld computer is then uploaded to a billing computer using specialized software for that purpose. The proposed accounting records the various components of the system in the primary plant accounts based upon their functions.

This rule proposes to revise Interpretation No. 104, Terminal Facilities, to comply with guidance provided by FERC for public utilities on the accounting for plant contributed by one electric cooperative to another. Previously, contributed plant was recorded as a deferred charge in Account 186, Miscellaneous Deferred Debits. FERC issuances, however, direct public utilities to record contributed plant as an intangible asset in Account 303, Miscellaneous Intangible Plant. Upon review, RUS has determined that the classification of contributed plant as an intangible asset is more appropriate and is, therefore, proposing a change in its accounting interpretations for RUS borrowers found in Interpretation No. 104.

List of Subjects in 7 CFR Part 1767

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Uniform System of Accounts.

For the reasons set forth in the preamble, RUS hereby proposes to amend 7 CFR chapter XVII as follows:

PART 1767—ACCOUNTING REQUIREMENTS FOR RUS ELECTRIC BORROWERS

1. The authority citation for part 1767 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Section 1767.13 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1767.13 Departures from the prescribed RUS Uniform System of Accounts.

* * * * *

(d) RUS borrowers will not implement the provisions of Statement of Financial Accounting Standards (SFAS) No. 71, Accounting for the Effects of Certain Types of Regulation; SFAS No. 90, Regulated Enterprises—Accounting for Abandonments and Disallowances of Plant Costs; SFAS No. 92, Regulated Enterprises—Accounting for Phase-in Plan without the prior written approval of RUS except as provided for in paragraphs (d)(1) through (d)(5) of this section. Requests for approval shall be addressed, in writing, to the Director, PASD. The specific deferrals set forth in paragraphs (d)(1) through (d)(5) of this

section may be implemented without the prior written approval of RUS.

(1) The deferral and amortization of prior service pension costs, remapping expenses, and preliminary survey and investigation charges;

(2) The deferral of any current period expense only if a borrower would have met its financial tests (Times Interest Earned Ratio or Debt Service Charge ratio) for the year had the deferral not been made;

(3) The deferral of any cost that will be fully amortized within the next 12 succeeding months;

(4) The accelerated amortization of any previously deferred expense; and

(5) The deferral of revenues coincident with a moratorium imposed by the National Rural Electric Cooperative Association on its Retirement and Security Program, provided, however, that the deferral is for the sole purpose of offsetting future pension cost increases.

* * * * *

3. Section 1767.17 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1767.17 Operating expense instructions.

(a) *Supervision and engineering.* The supervision and engineering includible in the operating expense accounts shall consist of the salary, employee pensions and benefits, social security and other payroll taxes, and other expenses of superintendents, engineers, clerks, other employees, and consultants engaged in supervising and directing the operation and maintenance of each utility function. Whenever allocations are necessary in order to arrive at the amount to be included in any account, the method and basis of allocation shall be reflected by underlying records.

(1) Labor items:

(i) Special tests to determine efficiency of equipment operation;

(ii) Preparing or reviewing budgets, estimates, and drawings relating to operation or maintenance for departmental approval;

(iii) Preparing instructions for operations and maintenance activities;

(iv) Reviewing and analyzing operating results;

(v) Establishing organizational setup of departments and executing changes therein;

(vi) Formulating and reviewing routines of departments and executing changes therein;

(vii) General training and instruction of employees by supervisors whose pay is chargeable hereto. Specific instructions and training in a particular type of work is chargeable to the

appropriate functional account (See paragraph (c)(19) of this section);

(viii) Secretarial work for supervisory personnel, but not general clerical and stenographic work chargeable to other accounts.

(2) Expense items:

(i) Employee pensions and benefits;

(ii) Social security and other payroll taxes;

(iii) Consultants' fees and expenses; and

(iv) Meals, traveling and incidental expenses.

(b) *Maintenance.* (1) The cost of maintenance chargeable to the various operating expense and clearing accounts includes labor, employee pensions and benefits, social security and other payroll taxes, materials, overheads, and other expenses incurred in maintenance work. A list of work operations applicable generally to utility plant is included hereunder. Other work operations applicable to specific classes of plant are listed in functional maintenance expense accounts.

(2) Materials recovered in connection with the maintenance of property shall be credited to the same account to which the maintenance cost was charged.

(3) If the book cost of any property is carried in Account 102, Electric Plant Purchased or Sold, the cost of maintaining such property shall be charged to the accounts for maintenance of property of the same class and use, the book cost of which is carried in other electric plant in service accounts. Maintenance of property leased from others shall be treated as provided in paragraph (c) of this section.

(4) Items:

(i) Direct field supervision of maintenance;

(ii) Inspecting, testing, and reporting on condition of plant specifically to determine the need for repairs, replacements, rearrangements and changes and inspecting and testing the adequacy of repairs which have been made;

(iii) Work performed specifically for the purpose of preventing failure, restoring serviceability or maintaining life of plant;

(iv) Rearranging and changing the location of plant not retired;

(v) Repairing for reuse materials recovered from plant;

(vi) Testing for, locating, and clearing trouble;

(vii) Net cost of installing, maintaining, and removing temporary facilities to prevent interruptions in service; and

(viii) Replacing or adding minor items of plant which do not constitute a retirement unit.

* * * * *

4. Section 1767.21 is proposed to be amended by revising Account 408 to read as follows:

§ 1767.21 Operating income.

* * * * *

408 Taxes Other Than Income Taxes

A. This account shall include the amounts of ad valorem, gross revenue, or gross receipts taxes, state unemployment insurance, franchise taxes, Federal excise taxes, social security taxes, and all other taxes assessed by Federal, state, county, municipal, or other local governmental authorities, except income taxes.

B. These accounts shall be charged in each accounting period with the amounts of taxes which are applicable thereto, with concurrent credits to Account 236, Taxes Accrued, or Account 165, Prepayments, as appropriate. When it is not possible to determine the exact amounts of taxes, the amounts shall be estimated and adjustments made in current accruals as the actual tax levies become known.

C. The charges to these accounts shall be made or supported so as to show the amount of each tax and the basis upon which each charge is made. In the case of a utility rendering more than one utility service, taxes of the kind includible in these accounts shall be assigned directly to the utility department the operation of which gave rise to the tax, in so far as practicable. Where the tax is not attributable to a specific utility department, it shall be distributed among the utility departments or nonutility operations on an equitable basis after appropriate study to determine such basis.

NOTE A: Special assessments for street and similar improvements shall be included in the appropriate utility plant or nonutility property account.

NOTE B: Taxes specifically applicable to construction and retirement activities shall be included in the cost of construction or the retirement.

NOTE C: Gasoline and other sales taxes shall be charged as far as practicable to the same account as the materials on which the tax is levied.

NOTE D: Social security and other forms of payroll taxes shall be charged to nonutility operations, the specific functional operations, maintenance, and administrative expense accounts, and to construction and retirement activities on a basis related to payroll either directly or by transfers from this account.

NOTE E: Property Taxes applicable to the various utility functions shall be charged to the appropriate miscellaneous operations or

administrative expense accounts either directly or by transfers from this account.

NOTE F: Interest on tax refunds or deficiencies shall not be included in these accounts but in Account 419, Interest and Dividend Income, or Account 431, Other Interest Expense, as appropriate.

D. Account 408 shall be subaccounted as follows:

- 408.1 Taxes—Property
- 408.2 Taxes—U.S. Social Security—Unemployment
- 408.3 Taxes—U.S. Social Security—F.I.C.A.
- 408.4 Taxes—State Social Security—Unemployment
- 408.5 Taxes—State Sales—Consumers
- 408.6 Taxes—Gross Revenue or Gross Receipts Tax
- 408.7 Taxes—Other

* * * * *

5. Section 1767.27 is proposed to be amended by revising Accounts 500, 501, 502, 505, 506, 510, 511, 512, 513, 514, 517, 519, 520, 523, 524, 528, 529, 530, 531, 532, 535, 537, 538, 539, 541, 542, 543, 544, 545, 546, 548, 549, 551, 552, 553, 554, 556, 560, 561, 562, 563, 564, 566, 568, 569, 570, 571, 572, 573, 580, 581, 582, 583, 584, 585, 586, 587, 588, 590, 591, 592, 593, 594, 595, 596, 597, and 598 to read as follows:

§ 1767.27 Operation and maintenance expense.

* * * * *

500 Operation Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of the operation of steam power generating stations. Direct supervision of specific activities, such as fuel handling, boiler-room operations, and generator operations shall be charged to the appropriate account. (See § 1767.17(a).)

501 Fuel

A. This account shall include the cost of fuel used in the production of steam for the generation of electricity, including expenses in unloading fuel from the shipping media and handling thereof up to the point where the fuel enters the first boiler plant bunker, hopper, bucket, tank, or holder of the boiler-house structure. Records shall be maintained to show the quantity, B.t.u. content and cost of each type of fuel used.

B. The cost of fuel shall be charged initially to Account 151, Fuel Stock, and cleared to this account on the basis of the fuel used. Fuel handling expenses may be charged to this account as incurred or charged initially to Account 152, Fuel Stock Expenses Undistributed.

In the latter event, they shall be cleared to this account on the basis of the fuel used. Respective amounts of fuel stock and fuel stock expenses shall be readily available.

Items

Labor:

1. Supervising, purchasing, and handling of fuel.
2. All routine fuel analyses.
3. Unloading from shipping facility and placing in storage.
4. Moving of fuel in storage and transferring fuel from one station to another.
5. Handling from storage or shipping facility to first bunker, hopper, bucket, tank, or holder of boiler-house structure.
6. Operation of mechanical equipment, such as locomotives, trucks, cars, boats, barges, and cranes.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Operating, maintenance, and depreciation expenses and ad valorem taxes on utility-owned transportation equipment used to transport fuel from the point of acquisition to the unloading point.
2. Lease or rental costs of transportation equipment used to transport fuel from the point of acquisition to the unloading point.
3. Cost of fuel including freight, switching, demurrage, and other transportation charges.
4. Excise taxes, insurance, purchasing commissions, and similar items.
5. Stores expenses to extent applicable to fuel.

6. Transportation and other expenses in moving fuel in storage.

7. Tools, lubricants, and other supplies.

8. Operating supplies for mechanical equipment.

9. Residual disposal expenses less any proceeds from sale of residuals.

Note: Abnormal fuel handling expenses occasioned by emergency conditions shall be charged to expense as incurred.

502 *Steam Expenses*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in production of steam for electric generation. This includes all expenses of handling and preparing fuel beginning at the point where the fuel enters the first boiler plant bunker, hopper, tank, or holder of the boiler-house structure.

Items

Labor:

1. Supervising steam production.
2. Operating fuel conveying, storage, weighing, and processing equipment within boiler plant.
3. Operating boiler and boiler auxiliary equipment.
4. Operating boiler feed water purification and treatment equipment.
5. Operating ash-collecting and disposal equipment located inside the plant.
6. Operating boiler plant electrical equipment.
7. Keeping boiler plant log and records and preparing reports on boiler plant operations.
8. Testing boiler water.
9. Testing, checking, and adjusting meters, gauges, and other instruments and equipment in boiler plant.
10. Cleaning boiler plant equipment when not incidental to maintenance work.
11. Repacking glands and replacing gauge glasses where the work involved is of a minor nature and is performed by regular operating crews. Where the work is of a major character, such as that performed on high-pressure boilers, the item should be considered as maintenance.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Chemicals and boiler inspection fees.

2. Lubricants.

3. Boiler feed water purchased and pumping supplies.

* * * * *

505 *Electric Expenses*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and materials used, and expenses incurred in operating prime movers, generators, and their auxiliary apparatus, switch gear, and other electric equipment to the points where electricity leaves for conversion for transmission or distribution.

Items

Labor:

1. Supervising electric production.
2. Operating turbines, engines, generators, and exciters.
3. Operating condensers, circulating water systems, and other auxiliary apparatus.
4. Operating generator cooling system.
5. Operating lubrication and oil control system, including oil purification.
6. Operating switchboards, switch gear and electric control, and protective equipment.
7. Keeping electric plant log and records and preparing reports on electric plant operations.
8. Testing, checking, and adjusting meters, gauges, and other instruments, relays, controls, and other equipment in the electric plant.
9. Cleaning electric plant equipment when not incidental to maintenance work.
10. Repacking glands and replacing gauge glasses.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and

benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Lubricants and control system oils.
2. Generator cooling gases.
3. Circulating water purification supplies.
4. Cooling water purchased.
5. Motor and generator brushes.

506 *Miscellaneous Steam Power Expenses*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, and materials used and expenses incurred which are not specifically provided for or not readily assignable to other steam generation operation expense accounts.

Items

Labor:

1. General clerical and stenographic work.
2. Guarding and patrolling plant and yard.
3. Building service.
4. Care of grounds including snow removal, and grass cutting.
5. Miscellaneous labor.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees

when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.

7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

8. Fees and expenses of claim investigators.

9. Payment of awards to claimants for court costs and attorneys' services.

10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.

11. Compensation payments under workmen's compensation laws.

12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)

13. Cost of safety, accident prevention, and similar educational activities.

Materials and Expenses:

1. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms.

2. First-aid supplies and safety equipment.

3. Employees' service facilities expenses.

4. Building service supplies.

5. Communication service.

6. Miscellaneous office supplies and expenses, printing, and stationery.

7. Transportation expenses.

8. Meals, traveling, and incidental expenses.

9. Research, development, and demonstration expenses.

* * * * *

510 Maintenance Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of maintenance of steam generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17(a).)

511 Maintenance of Structures

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and materials used and expenses incurred in the maintenance of steam structures, the book cost of which is includible in Account 311, Structures and Improvements. (See § 1767.17(b).)

512 Maintenance of Boiler Plant

A. This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and materials used and expenses incurred in the maintenance of steam plant, the book cost of which is includible in Account 312, Boiler Plant Equipment. (See § 1767.17(b).)

B. For the purpose of making charges hereto and to Account 513, Maintenance of Electric Plant, the point at which steam plant is distinguished from electric plant is defined as follows:

1. Inlet flange of throttle valve on prime mover.

2. Flange of all steam extraction lines on prime mover.

3. Hotwell pump outlet on condensate lines.

4. Inlet flange of all turbine-room auxiliaries.

5. Connection to line side of motor starter for all boiler-plant equipment.

513 Maintenance of Electric Plant

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and materials used and expenses incurred in the maintenance of electric plant, the book of which is includible in Account 313, Engines and Engine-Driven Generators; Account 314, Turbogenerator Units; and Account 315, Accessory Electric Equipment. (See § 1767.17(b) and Paragraph B of Account 512.)

514 Maintenance of Miscellaneous Steam Plant

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and materials used and expenses incurred in maintenance of miscellaneous steam generation plant, the book cost of which is includible in Account 316, Miscellaneous Power Plant Equipment. (See § 1767.17(b).)

* * * * *

517 Operation Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of the operation of nuclear power generating stations. Direct supervision of specific activities, such as fuel handling, reactor operations, and generator operations shall be charged to the appropriate account. (See § 1767.17(a).)

* * * * *

519 Coolants and Water

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and materials used and expenses incurred for heat transfer materials and water used for steam and cooling purposes.

Items

Labor:

1. Operation of water supply facilities.
2. Handling of coolants and heat transfer materials.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Chemicals.
2. Additions to or refining of, fluids used in reactor systems.
3. Lubricants.
4. Pumping supplies and expenses.
5. Miscellaneous supplies and expenses.
6. Purchased Water.

Note: Do not include in this account water for general station use or the initial charge for coolants, heat transfer, or moderator fluids, chemicals, or other supplies capitalized.

520 Steam Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and materials used and expenses incurred in production of steam through nuclear processes, and similar expenses for operation of any auxiliary superheat facilities.

Items

Labor:

1. Supervising steam production.
2. Fuel handling including removal, insertion, disassembly, and preparation for cooling operations and shipment.
3. Testing instruments and gauges.
4. Health, safety, monitoring, and decontamination activities.
5. Waste disposal.
6. Operating steam boilers and auxiliary steam, superheat facilities.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Chemical supplies.
2. Charts, and logs.
3. Health, safety, monitoring, and decontamination supplies.
4. Boiler inspection fees.
5. Lubricants.

* * * * *

523 Electric Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in operating turbogenerators, steam turbines and their auxiliary apparatus, switch gear, and other electric equipment to the points where electricity leaves for conversion for transmission or distribution.

Items

Labor:

1. Supervising electric production.
2. Operating turbines, engines, generators, and exciters.
3. Operating condensers, circulating water systems, and other auxiliary apparatus.
4. Operating generator cooling system.
5. Operating lubrication and oil control system, including oil purification.
6. Operating switchboards, switch gear, and electric control and protective equipment.
7. Keeping plant log and records and preparing reports on electric plant operations.
8. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls, and other equipment in the electric plant.
9. Cleaning electric plant equipment when not incidental to maintenance.
10. Repacking glands and replacing gauge glasses.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally

allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Lubricants and control system oils.
2. Generator cooling gases.
3. Log sheets and charts.
4. Motor and generator brushes.

524 Miscellaneous Nuclear Power Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, materials used, and expenses incurred which are not specifically provided for or are not readily assignable to other nuclear generation operation accounts.

Items

Labor:

1. General clerical and stenographic work.
2. Plant security.
3. Building service.
4. Care of grounds, including snow removal, and grass cutting.
5. Miscellaneous labor.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.
2. Amounts credited to Account 228.1, Accumulated Provision for

Property Insurance, for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.

7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

8. Fees and expenses of claim investigators.

9. Payment of awards to claimants for court costs and attorneys' services.

10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.

11. Compensation payments under workmen's compensation laws.

12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)

13. Cost of safety, accident prevention, and similar educational activities.

Materials and Expenses:

1. General operating supplies, such as tools, gaskets, hose, indicating lamps, records and reports forms.

2. First-aid supplies and safety equipment.

3. Employees' service facilities expenses.

4. Building service supplies.

5. Communication service.

6. Miscellaneous office supplies and expenses, printing and stationery.

7. Transportation expenses.

8. Meals, traveling, and incidental expenses.

9. Research, development, and demonstration expenses.

* * * * *

528 Maintenance Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of maintenance of nuclear generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17(a).)

529 Maintenance of Structures

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the maintenance of structures, the book cost of which is includible in Account 321, Structures and Improvements. (See § 1767.17(b).)

530 Maintenance of Reactor Plant Equipment

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the maintenance of reactor plant, the book cost of which is includible in Account 322, Reactor Plant Equipment. (See § 1767.17(b).)

531 Maintenance of Electric Plant

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the maintenance of electric plant, the book cost of which is includible in Account 323, Turbogenerator Units, and Account 324, Accessory Electric Equipment. (See § 1767.17(b).)

532 Maintenance of Miscellaneous Nuclear Plant

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of miscellaneous nuclear generating plant, the book cost of which is includible in Account 325, Miscellaneous Power Plant Equipment. (See § 1767.17(b).)

* * * * *

535 Operation Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of the operation of hydraulic power generating stations. Direct supervision of specific activities, such as hydraulic operation, and generator operation shall be charged to the appropriate account. (See § 1767.17(a).)

* * * * *

537 Hydraulic Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in operating hydraulic works including reservoirs, dams, and waterways, and in activities directly relating to the

hydroelectric development outside the generating station. It shall also include the cost of labor, materials used, and other expenses incurred in connection with the operation of (1) fish and wildlife, and (2) recreation facilities. Separate subaccounts shall be maintained for each of the above.

Items

Labor:

1. Supervising hydraulic operation.
2. Removing debris and ice from trash racks, reservoirs, and waterways.
3. Patrolling reservoirs and waterways.
4. Operating intakes, spillways, sluiceways, and outlet works.
5. Operating bubbler, heater, or other deicing systems.
6. Ice and log jam work.
7. Operating navigation facilities.
8. Operations relating to conservation of game, fish, and forests.
9. Insect control activities.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Insect control materials.
2. Lubricants, packing, and other supplies used in the operation of hydraulic equipment.
3. Transportation expense.

538 Electric Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in operating prime movers, generators, and their auxiliary apparatus, switchgear, and other electric

equipment, to the point where electricity leaves for conversion for transmission or distribution.

Items

Labor:

1. Supervising electric production.
2. Operating prime movers, generators, and auxiliary equipment.
3. Operating generator cooling system.
4. Operating lubrication and oil control systems, including oil purification.
5. Operating switchboards, switchgear, and electric control and protection equipment.
6. Keeping plant log and records and preparing reports on plant operations.
7. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls, and other equipment in the plant.
8. Cleaning plant equipment when not incidental to maintenance work.
9. Repacking glands.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Lubricants and control system oils.
2. Motor and generator brushes.

539 Miscellaneous Hydraulic Power Generation Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, materials used, and expenses incurred which are not specifically provided for or are not readily assignable to other hydraulic generation operation expense accounts.

Items

Labor:

1. General clerical and stenographic work.
2. Guarding and patrolling plant and yard.
3. Building service.
4. Care of grounds including snow removal, and grass cutting.
5. Snow removal from roads and bridges.
6. Miscellaneous labor.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.
2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.
3. Special costs incurred in procuring insurance.
4. Insurance inspection service.
5. Insurance counsel, brokerage fees, and expenses.
6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.
7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

8. Fees and expenses of claim investigators.

9. Payment of awards to claimants for court costs and attorneys' services.

10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.

11. Compensation payments under workmen's compensation laws.

12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)

13. Cost of safety, accident prevention, and similar educational activities.

Materials and Expenses:

1. General operating supplies, such as tools, gaskets, packing, waste, hose, indicating lamps, record and report forms.
2. First-aid supplies and safety equipment.
3. Employees' service facilities expenses.
4. Building service supplies.
5. Communication service.
6. Office supplies, printing and stationery.
7. Transportation expenses.
8. Fuel.
9. Meals, traveling, and incidental expenses.
10. Research, development, and demonstration expenses.

* * * * *

541 Maintenance Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of the maintenance of hydraulic power generating stations. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17(a).)

542 Maintenance of Structures

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of hydraulic structures, the book cost of which is includible in Account 331, Structures and Improvements. (See § 1767.17(b).) However, the cost of labor, materials used, and expenses incurred in the maintenance of fish and wildlife and recreation facilities, the book cost of which is includible in Account 331, Structures and Improvements, shall be charged to Account 545, Maintenance of Miscellaneous Hydraulic Plant.

543 Maintenance of Reservoirs, Dams, and Waterways

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of plant includible in Account 332, Reservoirs, Dams, and Waterways. (See § 1767.17(b).) However, the cost of labor, materials used, and expenses incurred in the maintenance of fish and wildlife and recreation facilities, the book cost of which is includible in Account 332, Reservoirs, Dams, and Waterways, shall be charged to Account 545, Maintenance of Miscellaneous Hydraulic Plant.

544 Maintenance of Electric Plant

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of plant includible in Account 333, Water Wheels, Turbines and Generators, and Account 334, Accessory Electric Equipment, (See § 1767.17(b).)

545 Maintenance of Miscellaneous Hydraulic Plant

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of plant, the book cost of which is includible in Account 335, Miscellaneous Power Plant Equipment, and Account 336, Roads Railroads and Bridges. (See § 1767.17(b).) It shall also include the cost of labor, materials used, and other expenses incurred in the maintenance of (1) fish and wildlife, and (2) recreation facilities. Separate subaccounts shall be maintained for each of the above.

* * * * *

546 Operation Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of the operation of other power generating stations. Direct supervision of specific activities, such as fuel handling and engine and generator operation shall be charged to the appropriate account. (See § 1767.17(a).)

* * * * *

548 Generation Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred

in operating prime movers, generators, and electric equipment in other power generating stations, to the point where electricity leaves for conversion for transmission or distribution.

Items**Labor:**

1. Supervising other power generation operation.
2. Operating prime movers, generators, and auxiliary apparatus and switching and other electric equipment.
3. Keeping plant log and records and preparing reports on plant operations.
4. Testing, checking, cleaning, oiling, and adjusting equipment.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Dynamo, motor, and generator brushes.
2. Lubricants and control system oils.
3. Water for cooling engines and generators.

549 Miscellaneous Other Power Generation Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, materials used, and expenses incurred in the operation of other power generating stations which are not specifically provided for or are not readily assignable to other generation expense accounts.

Items**Labor:**

1. General clerical and stenographic work.

2. Guarding and patrolling plant and yard.
3. Building service.
4. Care of grounds, including snow removal, and grass cutting.

5. Miscellaneous labor.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.

7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

8. Fees and expenses of claim investigators.

9. Payment of awards to claimants for court costs and attorneys' services.

10. Medical and hospital service and expenses for employees as the result of

occupational injuries or resulting from claims of others.

11. Compensation payments under workmen's compensation laws.

12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)

13. Cost of safety, accident prevention, and similar educational activities.

Materials and Expenses:

1. Building service supplies.
2. First-aid supplies and safety equipment.
3. Communication service.
4. Employees' service facilities expenses.
5. Office supplies, printing and stationery.
6. Transportation expense.
7. Meals, traveling, and incidental expenses.
8. Fuel for heating.
9. Water for fire protection or general use.
10. Miscellaneous supplies, such as hand tools, drills, saw blades, and files.
11. Research, development, and demonstration expenses.

* * * * *

551 Maintenance Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of the maintenance of other power generating stations. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17(a).)

552 Maintenance of Structures

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of facilities used and expenses incurred in maintenance of facilities used in other power generation, the book cost of which is includible in Account 341, Structures and Improvements, and Account 342, Fuel Holders, Producers and Accessories. (See § 1767.17(b).)

553 Maintenance of Generating and Electric Equipment

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of plant, the book cost of which is includible in Account 343, Prime Movers; Account 344, Generators; and Account 345, Accessory Electric Equipment. (See § 1767.17(b).)

554 Maintenance of Miscellaneous Other Power Generation Plant

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of other power generation plant, the book cost of which is includible in Account 346, Miscellaneous Power Plant Equipment. (See § 1767.17(b).)

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556 System Control and Load Dispatching

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in load dispatching activities for system control. Utilities having an interconnected electric system or operating under a central authority which controls the production and dispatching of electricity may apportion these costs to this account and Account 561, Load Dispatching, and Account 581, Load Dispatching.

Items

Labor:

1. Allocating loads to plants and interconnections with others.
2. Directing switching.
3. Arranging and controlling clearances for construction, maintenance, test, and emergency purposes.
4. Controlling system voltages.
5. Recording loadings, and water conditions.
6. Preparing operating reports and data for billing and budget purposes.
7. Obtaining reports on the weather and special events.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally

allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Expenses:

1. Communication service provided for system control purposes.
2. System record and report forms.
3. Meals, traveling, and incidental expenses.
4. Obtaining weather and special events reports.

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560 Operation Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of the operation of the transmission system as a whole. Direct supervision of specific activities, such as station operation and line operation shall be charged to the appropriate account. (See § 1767.17(a).)

561 Load Dispatching

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in load dispatching operations pertaining to the transmission of electricity.

Items

Labor:

1. Direct switching.
2. Arranging and controlling clearances for construction, maintenance, test, and emergency purposes.
3. Controlling system voltages.
4. Obtaining reports on the weather and special events.
5. Preparing operating reports and data for billing and budget purposes.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Expenses:

1. Communication service provided for system control purposes.
2. System record and report forms.
3. Meals, traveling, and incidental expenses.
4. Obtaining weather and special events reports.

562 Station Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in operating transmission substations and switching stations. If transmission station equipment is located in or adjacent to a generating station, the expenses applicable to transmission station operations shall nevertheless be charged to this account.

Items

Labor:

1. Supervising station operation.
2. Adjusting station equipment where such adjustment primarily affects performance, such as regulating the flow of cooling water, adjusting current in fields of a machine or changing voltage of regulators, changing station transformer taps.
3. Inspecting, testing, and calibrating station equipment for the purpose of checking its performance.
4. Keeping station log and records and preparing records on station operation.
5. Operating switching and other station equipment.
6. Standing watch, guarding, and patrolling station and station yard.
7. Sweeping, mopping, and tidying station.
8. Care of grounds, including snow removal, and grass cutting.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees

when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Building service expenses.
2. Operating supplies, such as lubricants, commutator brushes, water, and rubber goods.
3. Station meter and instrument supplies, such as ink and charts.
4. Station record and report forms.
5. Tool expense.
6. Transportation expenses.
7. Meals, traveling, and incidental expenses.

563 Overhead Line Expenses

564 Underground Line Expenses

A. These accounts shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the operation of transmission lines.

B. If the expenses are not substantial for both overhead and underground lines, these accounts may be combined.

Items

Labor:

1. Supervising line operation.
2. Inspecting and testing lightning arresters, circuit breakers, switches, and grounds.
3. Load tests of circuits.
4. Routine line patrolling.
5. Routine voltage surveys made to determine the condition or efficiency of transmission system.
6. Transferring loads, switching and reconnecting circuits and equipment for operating purposes. (Switching for construction or maintenance purposes is not includible in this account.)
7. Routine inspection and cleaning of manholes, conduit, network, and transformer vaults.
8. Electrolysis surveys.
9. Inspecting and adjusting line-testing equipment, such as voltmeters, ammeters, and wattmeters.
10. Regulation and addition of oil or gas in high-voltage cable systems.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and

benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Transportation expenses.
2. Meals, traveling, and incidental expenses.
3. Tool expenses.
4. Operating supplies, such as instrument charts, and rubber goods.

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566 Miscellaneous Transmission Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, materials used, and expenses incurred in transmission map and record work, transmission office expenses, and other transmission expenses not provided for elsewhere.

Items

Labor:

1. General records of physical characteristics of lines and stations, such as capacities.
2. Ground resistance records.
3. Janitor work at transmission office buildings, including care of grounds, snow removal, and grass cutting.
4. Joint pole maps and records.
5. Line load and voltage records.
6. Preparing maps and prints.
7. General clerical and stenographic work.

8. Miscellaneous labor.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.

7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

8. Fees and expenses of claim investigators.

9. Payment of awards to claimants for court costs and attorneys' services.

10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.

11. Compensation payments under workmen's compensation laws.

12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)

13. Cost of safety, accident prevention, and similar educational activities.

Materials and Expenses:

1. Communication service.

2. Building service supplies.

3. Map and record supplies.

4. Transmission office supplies and expenses, printing and stationery.

5. First-aid supplies.

6. Research, development, and demonstration expenses.

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568 Maintenance Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of maintenance of the transmission system. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17(a).)

569 Maintenance of Structures

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the maintenance of structures, the book cost of which is includible in Account 352, Structures and Improvements. (See § 1767.17(b).)

570 Maintenance of Station Equipment

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of station equipment, the book cost of which is includible in Account 353, Station Equipment. (See § 1767.17(b).)

571 Maintenance of Overhead Lines

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of transmission plant, the book cost of which is includible in Accounts 354, Towers and Fixtures; 355, Poles and Fixtures; 356, Overhead Conductors and Devices; and 359, Roads and Trails. (See § 1767.17(b).)

Items

1. Work of the following character on poles, towers, and fixtures:

a. Installing or removing additional clamps or strain insulators on guys in place.

b. Moving line or guy pole in relocation of the same pole or section of line.

c. Painting poles, towers, crossarms, or pole extensions.

d. Readjusting and changing position of guys or braces.

e. Realigning and straightening poles, crossarms braces, and other pole fixtures.

f. Reconditioning reclaimed pole fixtures.

g. Relocating crossarms, racks, brackets, and other fixtures on poles.

h. Repairing or realigning pins, racks, or brackets.

i. Repairing pole supported platform.

j. Repairs by others to jointly owned poles.

k. Shaving, cutting rot, or testing poles or crossarms in use or salvaged for reuse.

l. Stubbing poles already in service.

m. Supporting fixtures and conductors and transferring them to new poles during pole replacements.

n. Maintenance of pole signs, stencils, and tags.

2. Work of the following character on overhead conductors and devices:

a. Overhauling and repairing line cutouts, line switches, and line breakers.

b. Cleaning insulators and bushings.

c. Refusing cutouts.

d. Repairing line oil circuit breakers and associated relays and control wiring.

e. Repairing grounds.

f. Resagging, retyping, or rearranging position or spacing of conductors.

g. Standing by phones, going to calls, cutting faulty lines clear, or similar activities at times of emergencies.

h. Sampling, testing, changing, purifying, and replenishing insulating oil.

i. Repairing line testing equipment.

j. Transferring loads, switching and reconnecting circuits and equipment for maintenance purposes.

k. Trimming trees and clearing brush.

l. Chemical treatment of right of way areas when occurring subsequent to construction of line.

3. Work of the following character on roads and trails:

a. Repairing roadways and bridges.

b. Trimming trees and brush to maintain previous roadway clearance.

c. Snow removal from roads and trails.

d. Maintenance work on publicly owned roads and trails when done by utility at its expense.

Taxes:

1. Federal and state unemployment.

2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

572 Maintenance of Underground Lines

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of transmission plant, the book cost of which is includible in Accounts 357, Underground Conduit, and Account 358, Underground Conductors and Devices. (See § 1767.17(b).)

Items

1. Work of the following character on underground conduit:

- a. Cleaning ducts, manholes, and sewer connections.
- b. Minor alterations of handholes, manholes, or vaults.
- c. Refastening, repairing, or moving racks, ladders, hangers in manholes, or vaults.

d. Plugging and shelving or replugging ducts.

e. Repairs to sewers and drains, walls and floors, rings and covers.

2. Work of the following character on underground conductors and devices:

- a. Repairing oil circuit breakers, switches, cutouts, and control wiring.
- b. Repairing grounds.
- c. Retraining and reconnecting cables in manholes, including transfer of cables from one duct to another.
- d. Repairing conductors and splices.
- e. Repairing or moving junction boxes and potheads.
- f. Refireproofing of cables and repairing supports.
- g. Repairing electrolysis preventive devices for cables.

h. Repairing cable bonding systems.

i. Sampling, testing, changing, purifying, and replenishing insulating oil.

j. Transferring loads, switching and reconnecting circuits, and equipment for maintenance purposes.

k. Repairing line testing equipment.

l. Repairs to oil or gas equipment in high-voltage cable system and replacement of oil or gas.

Taxes:

- 1. Federal and state unemployment.
- 2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

573 Maintenance of Miscellaneous Transmission Plant

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of owned or leased plant which is assignable to transmission operations and is not provided for elsewhere. (See § 1767.17(b).)

* * * * *

580 Operation Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of the operation of the distribution system. Direct supervision of specific activities, such as station operation, line operation, and meter department operation shall be charged to the appropriate account. (See § 1767.17(a).)

581 Load Dispatching

This account (the keeping of which is optional with the utility) shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in load dispatching operations pertaining to the distribution of electricity.

Items

Labor:

- 1. Direct switching.
- 2. Arranging and controlling clearances for construction,

maintenance, test, and emergency purposes.

3. Controlling system voltages.

4. Preparing operating reports.

5. Obtaining reports on the weather and special events.

Taxes:

1. Federal and state unemployment.

2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Expenses:

1. Communication service provided for system control purposes.

2. System record and report forms.

3. Meals, traveling, and incidental expenses.

582 Station Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the operation of distribution substations.

Items

Labor:

1. Supervising station operation.

2. Adjusting station equipment where such adjustment primarily affects performance, such as regulating the flow of cooling water, adjusting current in fields of a machine, changing voltage of regulators, or changing station transformer taps.

3. Keeping station log and records and preparing reports on station operation.

4. Inspecting, testing, and calibrating station equipment for the purpose of checking its performance.

5. Operating switching and other station equipment.

6. Standing watch, guarding, and patrolling station and station yard.

7. Sweeping, mopping, and tidying station.

8. Care of grounds, including snow removal, and grass cutting.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Building service expenses.
2. Operating, supplies, such as lubricants, commutator brushes, water, and rubber goods.
3. Station meter and instrument supplies, such as ink and charts.
4. Station record and report forms.
5. Tool expense.
6. Transportation expense.
7. Meals, traveling, and incidental expenses.

Note: If the utility owns storage battery equipment used for supplying electricity to customers in periods of emergency, the cost of operating labor and of supplies, such as acid, gloves, hydrometers, thermometers, soda, automatic cell fillers, and acid proof shoes shall be included in this account. If significant in amount, a separate subdivision shall be maintained for such expenses.

583 Overhead Line Expenses

584 Underground Line Expenses

These accounts shall include, respectively, the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the operation of overhead and underground distribution lines.

Items

Labor:

1. Supervising line operation.
2. Changing line transformer taps.

3. Inspecting and testing lightning arresters, line circuit breakers, switches, and grounds.

4. Inspecting and testing line transformers for the purpose of determining load, temperature, or operation performance.

5. Patrolling lines.

6. Load tests and voltage surveys of feeders, circuits, and line transformers.

7. Removing line transformers and voltage regulators with or without replacement.

8. Installing line transformers or voltage regulators with or without change in capacity provided that the cost of first installation of these items is included in Account 368, Line Transformers.

9. Voltage surveys, either routine or upon request of customers, including voltage tests at customer's main switch.

10. Transferring loads, switching and reconnecting circuits and equipment for operation purposes.

11. Electrolysis surveys.

12. Inspecting and adjusting line testing equipment.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Tool expense.
2. Transportation expense.
3. Meals, traveling, and incidental expenses.
4. Operating supplies, such as instrument charts, and rubber goods.

585 Street Lighting and Signal System Expenses

This account shall include the cost of labor, employee pensions and benefits,

social security and other payroll taxes, materials used, and expenses incurred in: (1) The operation of street lighting and signal system plant which is owned or leased by the utility; and (2) the operation and maintenance of such plant owned by customers where such work is done regularly as a part of the street lighting and signal system service.

Items

Labor:

1. Supervising street lighting and signal systems operation.

2. Replacing lamps and incidental cleaning of glassware and fixtures in connection therewith.

3. Routine patrolling for lamp outages, extraneous nuisances, or encroachments.

4. Testing lines and equipment including voltage and current measurement.

5. Winding and inspection of time switch and other controls.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Street lamp renewals.
2. Transportation and tool expense.
3. Meals, traveling, and incidental expenses.

586 Meter Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the operation of customer meters and associated equipment.

Items

Labor:

1. Supervising meter operation.
2. Clerical work on meter history and associated equipment record cards, test cards, and reports.
3. Disconnecting and reconnecting, removing and reinstalling, sealing and unsealing meters and other metering equipment in connection with initiating or terminating services including the cost of obtaining meter readings, if incidental to such operation.
4. Consolidating meter installations due to elimination of separate meters for different rates of service.
5. Changing or relocating meters, instrument transformers, time switches, and other metering equipment.
6. Resetting time controls, checking operation of demand meters and other metering equipment, when done as an independent operation.
7. Inspecting and adjusting meter testing equipment.
8. Inspecting and testing meters, instrument transformers, time switches, and other metering equipment on premises or in shops excluding inspecting and testing incidental to maintenance.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Meter seals and miscellaneous meter supplies.
2. Transportation expenses.
3. Meals, traveling, and incidental expenses.
4. Tool expenses.

Note: The cost of the first setting and testing of a meter is chargeable to utility plant, Account 370, Meters.

587 Customer Installations Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in work on customer installations in inspecting premises and in rendering services to customers of the nature of those indicated by the list of items hereunder.

*Items**Labor:*

1. Supervising customer installations work.
2. Inspecting premises, including the check of wiring for code compliance.
3. Investigating, locating, and clearing grounds on customers' wiring.
4. Investigating service complaints, including load tests of motors and lighting and power circuits on customers' premises; field investigations of complaints on bills or of voltage.
5. Installing, removing, renewing, and changing lamps and fuses.
6. Radio, television, and similar interference work including erection of new aerials on customers' premises and patrolling of lines, testing of lightning arresters, inspection of pole hardware, and examination on or off premises of customers' appliances, wiring, or equipment to locate cause of interference.
7. Installing, connecting, reinstalling, or removing leased property on customers' premises.
8. Testing, adjusting, and repairing customers' fixtures and appliances in the shop or on premises.
9. Cost of changing customers' equipment due to changes in service characteristics.
10. Investigation of current diversion including setting and removal of check meters and securing special readings thereon; special calls by employees in connection with discovery and settlement of current diversion; changes in customer wiring; and any other labor cost identifiable as caused by current diversion.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees

when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Lamp and fuse renewals.
2. Materials used in servicing customers' fixtures, appliances, and equipment.
3. Power, light, heat, telephone, and other expenses of the appliance repair department.
4. Tool expense.
5. Transportation expense, including pickup and delivery charges.
6. Meals, traveling, and incidental expenses.
7. Rewards paid for discovery of current diversion.

Note A: Amounts billed customers for any work, the cost of which is charged to this account, shall be credited to this account. Any excess over costs resulting therefrom, shall be transferred to Account 451, Miscellaneous Service Revenues.

Note B: Do not include in this account expenses incurred in connection with merchandising, jobbing, and contract work.

588 Miscellaneous Distribution Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, materials used, and expenses incurred in distribution system operation not provided for elsewhere.

*Items**Labor:*

1. General records of physical characteristics of lines and substations, such as capacities.
2. Ground resistance records.
3. Joint pole maps and records.
4. Distribution system voltage and load records.
5. Preparing maps and prints.
6. Service interruption and trouble records.
7. General clerical and stenographic work except that chargeable to Account 586, Meter Expenses.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and

benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.
2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.
3. Special costs incurred in procuring insurance.
4. Insurance inspection service.
5. Insurance counsel, brokerage fees, and expenses.
6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.
7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.
8. Fees and expenses of claim investigators.
9. Payment of awards to claimants for court costs and attorneys' services.
10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.
11. Compensation payments under workmen's compensation laws.
12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)
13. Cost of safety, accident prevention, and similar educational activities.

Expenses:

1. Operating records covering poles, transformers, manholes, cables, and other distribution facilities. Exclude meter records chargeable to Account 586, Meter Expenses, and station records chargeable to Account 582, Station Expenses, and stores records chargeable to Account 163, Stores Expense Undistributed.
2. Janitor work at distribution office buildings including snow removal and grass cutting.
3. Communication service.
4. Building service expenses.
5. Miscellaneous office supplies and expenses, printing and stationery, maps and records, and first-aid supplies.
6. Research, development, and demonstration expenses.

* * * * *

590 Maintenance Supervision and Engineering

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general supervision and direction of maintenance of the distribution system. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17(a).)

591 Maintenance of Structures

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of structures, the book cost of which is includible in Account 361, Structures and Improvements. (See § 1767.17(b).)

592 Maintenance of Station Equipment

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of plant, the book cost of which is includible in Account 362, Station Equipment, and Account 363, Storage Battery Equipment. (See § 1767.17(b).)

593 Maintenance of Overhead Lines

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in Account 364, Poles, Towers and Fixtures; Account 365, Overhead Conductors and Devices; and Account 369, Services. (See § 1767.17(b).)

Items

1. Work of the following character on poles, towers, and fixtures:

- a. Installing additional clamps or removing clamps or strain insulators on guys in place.
- b. Moving line or guy pole in relocation of pole or section of line.
- c. Painting poles, towers, crossarms, or pole extensions.
- d. Readjusting and changing position of guys or braces.
- e. Realigning and straightening poles, crossarms, braces, pins, racks, brackets, and other pole fixtures.
- f. Reconditioning reclaimed pole fixtures.
- g. Relocating crossarms, racks, brackets, and other fixtures on poles.
- h. Repairing pole supported platform.
- i. Repairs by others to jointly owned poles.

j. Shaving, cutting rot, or treating poles or crossarms in use or salvaged for reuse.

k. Stubbing poles already in service.

l. Supporting conductors, transformers, and other fixtures and transferring them to new poles during pole replacements.

m. Maintaining pole signs, stencils, and tags.

2. Work of the following character on overhead conductors and devices:

a. Overhauling and repairing line cutouts, line switches, line breakers, and capacitor installations.

b. Cleaning insulators and bushings.

c. Refusing line cutouts.

d. Repairing line oil circuit breakers and associated relays and control wiring.

e. Repairing grounds.

f. Resagging, retying, or rearranging position or spacing of conductors.

g. Standing by phones, going to calls, cutting faulty lines clear, or similar activities at times of emergency.

h. Sampling, testing, changing, purifying, and replenishing insulating oil.

i. Transferring loads, switching, and reconnecting circuits and equipment for maintenance purposes.

j. Repairing line testing equipment.

k. Trimming trees and clearing brush.

l. Chemical treatment of right-of-way area when occurring subsequent to construction of line.

3. Work of the following character on overhead services:

a. Moving position of service either on pole or on customers' premises.

b. Pulling slack in service wire.

c. Retying service wire.

d. Refastening or tightening service bracket.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

594 *Maintenance of Underground Lines*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the maintenance of underground distribution line facilities, the book cost of which is includable in Account 366, Underground Conduit; Account 367, Underground Conductors and Devices; and Account 369, Services. (See § 1767.17(b).)

Items

1. Work of the following character on underground conduit:
 - a. Cleaning ducts, manholes, and sewer connections.
 - b. Moving or changing position of conduit or pipe.
 - c. Minor alterations of handholes, manholes, or vaults.
 - d. Refastening, repairing, or moving racks, ladders, or hangers in manholes or vaults.
 - e. Plugging and shelving ducts.
 - f. Repairs to sewers, drains, walls, and floors, rings, and covers.
2. Work of the following character on underground conductors and devices:
 - a. Repairing circuit breakers, switches, cutouts, network protectors, and associated relays and control wiring.
 - b. Repairing grounds.
 - c. Retraining and reconnecting cables in manholes including transfer of cables from one duct to another.
 - d. Repairing conductors and splices.

- e. Repairing or moving junction boxes and potheads.

- f. Refireproofing cables and repairing supports.

- g. Repairing electrolysis preventive devices for cables.

- h. Repairing cable bonding systems.

- i. Sampling, testing, changing, purifying, and replenishing insulating oil.

- j. Transferring loads, switching and reconnecting circuits and equipment for maintenance purposes.

- k. Repairing line testing equipment.

- l. Repairing oil or gas equipment in high voltage cable systems and replacement of oil or gas.

3. Work of the following character on underground services:

- a. Cleaning ducts.
- b. Repairing any underground service plant.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

595 *Maintenance of Line Transformers*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of distribution line transformers, the book cost of which is includable in Account 368, Line Transformers. (See § 1767.17(b).)

596 *Maintenance of Street Lighting and Signal Systems*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of plant, the book cost

of which is includable in Account 373, Street Lighting and Signal Systems. (See § 1767.17(b).)

597 *Maintenance of Meters*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the maintenance of meters and meter testing equipment, the book cost of which is includable in Account 370, Meters, and Account 395, Laboratory Equipment, respectively. (See § 1767.17(b).)

598 *Maintenance of Miscellaneous Distribution Plant*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in maintenance of plant, the book cost of which is includable in Accounts 371, Installations on Customers' Premises, and Account 372, Leased Property on Customers' Premises, and any other plant the maintenance of which is assignable to the distribution function and is not provided for elsewhere. (See § 1767.17(b).)

Items

1. Work of similar nature to that listed in other distribution maintenance accounts.

2. Maintenance of office furniture and equipment used by distribution system department.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

6. Section 1767.28 is proposed to be amended by revising Accounts 901, 902, 903, and 905 to read as follows:

§ 1767.28 Customer accounts expenses.

* * * * *

901 Supervision

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general direction and supervision of customer accounting and collecting activities. Direct supervision of a specific activity shall be charged to Account 902, Meter Reading Expenses, or Account 903, Customer Records and Collection Expenses, as appropriate. (See § 1767.17(a).)

902 Meter Reading Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in reading customer meters, and determining consumption when performed by employees engaged in reading meters.

Items

Labor:

1. Addressing forms for obtaining meter readings by mail.
2. Changing and collecting meter charts used for billing purposes.
3. Inspecting time clocks and checking seals when performed by meter readers and the work represents a minor activity incidental to regular meter reading routine.
4. Reading meters, including demand meters, and obtaining load information for billing purposes. Exclude and charge to Account 586, Meter Expenses, or to Account 903, Customer Records and Collection Expenses, as applicable, the cost of obtaining meter readings, first and final, if incidental to the operation of removing or resetting, sealing or locking, and disconnecting or reconnecting meters.
5. Computing consumption from meter reader's book or from reports by mail when done by employees engaged in reading meters.
6. Collecting from prepayment meters when incidental to meter reading.
7. Maintaining record of customers' keys.
8. Computing estimated or average consumption when performed by employees engaged in reading meters.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and

benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
 2. Group and life insurance premiums (credit dividends received).
 3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
 4. Payments for accident, sickness, hospital, and death benefits or insurance.
 5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
 6. Expenses in connection with educational and recreational activities for the benefit of employees.
- Materials and Expenses:**
1. Badges, lamps, and uniforms.
 2. Demand charts, meter books and binders and forms for recording readings, but not the cost of preparation.
 3. Postage and supplies used in obtaining meter readings by mail.
 4. Transportation, meals, and incidental expenses.

903 Customer Records and Collection Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in work on customer applications, contracts, orders, credit investigations, billing and accounting, collections and complaints.

Items

Labor:

1. Receiving, preparing, recording, and handling routine orders for service, disconnections, transfers or meter tests initiated by the customer, excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by such orders.
2. Investigations of customers' credit and keeping of records pertaining thereto, including records of uncollectible accounts written off.
3. Receiving, refunding, or applying customer deposits and maintaining customer deposit, line extension, and other miscellaneous records.
4. Checking consumption shown by meter readers' reports where incidental to preparation of billing date.
5. Preparing address plates and addressing bills and delinquent notices.
6. Preparing billing data.
7. Operating billing and bookkeeping machines.

8. Verifying billing records with contracts or rate schedules.

9. Preparing bills for delivery and mailing or delivering bills.

10. Collecting revenues, including collection from prepayment meters, unless incidental to meter-reading operations.

11. Balancing collections, preparing collections for deposit, and preparing cash reports.

12. Posting collections and other credits or charges to customer accounts and extending unpaid balances.

13. Balancing customer accounts and controls.

14. Preparing, mailing, or delivering delinquent notices and preparing reports of delinquent accounts.

15. Final meter reading of delinquent accounts when done by collectors incidental to regular activities.

16. Disconnecting and reconnecting service because of nonpayment bills.

17. Receiving, recording, and handling of inquiries, complaints, and requests for investigations from customers, including preparation of necessary orders, but excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by such orders.

18. Statistical and tabulating work on customer accounts and revenues, but not including special analyses for sales department, rate department, or other general purposes, unless incidental to regular customer accounting routines.

19. Preparing and periodically rewriting meter reading sheets.

20. Determining consumption and computing estimated or average consumption when performed by employees other than those engaged in reading meters.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of

occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Address plates and supplies.
2. Cash overages and shortages.
3. Commissions or fees to others for collecting.
4. Payments to credit organizations for investigations and reports.
5. Postage.
6. Transportation expenses, including transportation of customer bills and meter books under centralized billing procedures.
7. Transportation, meals, and incidental expenses.
8. Bank charges, exchange, and other fees for cashing and depositing customers' checks.
9. Forms for recording orders for services, or removals.
10. Rent of mechanical equipment.

Note: The cost of work on meter history and meter location records is chargeable to Account 586, Meter Expenses.

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905 *Miscellaneous Customer Accounts Expenses*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, materials used, and expenses incurred not provided for in other accounts.

Items

Labor:

1. General clerical and stenographic work.
2. Miscellaneous labor.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of

occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.
2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.
3. Special costs incurred in procuring insurance.
4. Insurance inspection service.
5. Insurance counsel, brokerage fees, and expenses.
6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.
7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.
8. Fees and expenses of claim investigators.
9. Payment of awards to claimants for court costs and attorneys' services.
10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.
11. Compensation payments under workmen's compensation laws.
12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)
13. Cost of safety, accident prevention, and similar educational activities.

Materials and Expenses:

1. Communication service.
 2. Miscellaneous office supplies and expenses and stationery and printing other than those specifically provided for in Account 902 and Account 903.
7. Section 1767.29 is proposed to be amended by revising Accounts 907, 908, 909, and 910 to read as follows:

§ 1767.29 Customer service and informational expenses.

* * * * *

907 *Supervision*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general direction and supervision of customer

service activities, the object of which is to encourage safe, efficient, and economical use of the utility's service. Direct supervision of a specific activity within customer service and informational expense classification shall be charged to the account wherein the costs of such activity are included. (See § 1767.17(a).)

908 *Customer Assistance Expenses*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in providing instructions or assistance to customers, the object of which is to encourage safe, efficient, and economical use of the utility's service.

Items

Labor:

1. Direct supervision of department.
2. Processing customer inquiries relating to the proper use of electric equipment, the replacement of such equipment, and information related to such equipment.
3. Advice directed to customers as to how they may achieve the most efficient and safest use of electric equipment.
4. Demonstrations, exhibits, lectures, and other programs designed to instruct customers in the safe, economical, or efficient use of electric service, and/or oriented toward conservation of energy.
5. Engineering and technical advice to customers, the object of which is to promote safe, efficient, and economical use of the utility's service.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Supplies and expenses pertaining to demonstrations, exhibits, lectures, and other programs.
2. Loss in value on equipment and appliances used for customer assistance programs.
3. Office supplies and expenses.
4. Transportation, meals, and incidental expenses.

Note: Do not include in this account expenses that are provided for elsewhere, such as Accounts 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work; 587, Customer Installations Expenses; and 912, Demonstrating and Selling Expenses.

909 Informational and Instructional Advertising Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in activities which primarily convey information as to what the utility urges or suggests customers should do in utilizing electric service to protect health and safety, to encourage environmental protection, to utilize their electric equipment safely and economically, or to conserve electric energy.

*Items**Labor:*

1. Direct supervision of information activities.
2. Preparing informational materials for newspapers, periodicals, and billboards and preparing and conducting informational motion pictures, radio and television programs.
3. Preparing informational booklets and bulletins used in direct mailings.
4. Preparing informational window and other displays.
5. Employing agencies, selecting media, and conducting negotiations in connection with the placement and subject matter of information programs.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Use of newspapers, periodicals, billboards, and radio for informational purposes.
2. Postage on direct mailings to customers exclusive of postage related to billings.
3. Printing of informational booklets, dodgers, and bulletins.
4. Supplies and expenses in preparing informational materials by the utility.
5. Office supplies and expenses.

Note A: Exclude from this account and charge to Account 930.2, Miscellaneous General Expenses, the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Also exclude all expenses of a promotional, institutional, goodwill, or political nature, which are includible in such accounts as 913, Advertising Expenses; 930.1, General Advertising Expenses; and 426.4, Expenditures for Certain Civic, Political and Related Activities.

Note B: Entries relating to informational advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of the advertising message shall be readily available.

910 Miscellaneous Customer Service and Informational Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, materials used, and expenses incurred in connection with customer service and informational activities which are not includible in other customer information expense accounts.

*Items**Labor:*

1. General clerical and stenographic work not assigned to specific customer service and informational programs.
2. Miscellaneous labor.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.

7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

8. Fees and expenses of claim investigators.

9. Payment of awards to claimants for court costs and attorneys' services.

10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.

11. Compensation payments under workmen's compensation laws.

12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)

13. Cost of safety, accident prevention, and similar educational activities.

Materials and Expenses:

1. Communication service.
2. Printing, postage, and office supplies expenses.

8. Section 1767.30 is proposed to be amended by revising Accounts 911, 912, 913, and 916 to read as follows:

§ 1767.30 Sales expenses.

* * * * *

911 Supervision

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, and expenses incurred in the general direction and supervision of sales activities, except merchandising. Direct supervision of a specific activity, such as demonstrating, selling, or advertising shall be charged to the account wherein the costs of such activity are included. (See § 1767.17(a).)

912 Demonstrating and Selling Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in promotional, demonstrating, and selling activities, except by merchandising, the object of which is to promote or retain the use of utility services by present and prospective customers.

Items**Labor:**

1. Demonstrating uses of utility services.
2. Conducting cooking schools, preparing recipes, and related home service activities.
3. Exhibitions, displays, lectures, and other programs designed to promote use of utility services.
4. Experimental and development work in connection with new and improved appliances and equipment, prior to general public acceptance.
5. Solicitation of new customers or of additional business from old customers, including commissions paid employees.
6. Engineering and technical advice to present or prospective customers in connection with promoting or retaining the use of utility services.
7. Special customer canvasses when their primary purpose is the retention of business or the promotion of new business.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees

when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Supplies and expenses pertaining to demonstration, experimental, and development activities.

2. Booth and temporary space rental.

3. Loss in value on equipment and appliances used for demonstration purposes.

4. Transportation, meals, and incidental expenses.

913 Advertising Expenses

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in advertising designed to promote or retain the use of utility service, except advertising the sale of merchandise by the utility.

Items**Labor:**

1. Direct supervision of department.
2. Preparing advertising material for newspapers, periodicals, and billboards, and preparing and conducting motion pictures, radio, and television programs.
3. Preparing booklets and bulletins used in direct mail advertising.
4. Preparing window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of sales advertising.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Advertising in newspapers, periodicals, billboards, and radio for sales promotion purposes, but not including institutional or goodwill advertising includible in Account 930.1, General Advertising Expenses.

2. Materials and services given as prizes or otherwise in connection with civic lighting contests, canning, or cooking contests, and bazaars in order to publicize and promote the use of utility services.

3. Fees and expenses of advertising agencies and commercial artists.

4. Novelties for general distribution.

5. Postage on direct mail advertising.

6. Premiums distributed generally, such as recipe books when not offered as inducement to purchase appliances.

7. Printing booklets, dodgers, and bulletins.

8. Supplies and expenses in preparing advertising material.

9. Office supplies and expenses.

Note A: The cost of advertisements which set forth the value or advantages of utility service without reference to specific appliances, or, if reference is made to appliances, invites the reader to purchase appliances from his dealer or refer to appliances not carried for sale by the utility, shall be considered sales promotion advertising and charged to this account. However, advertisements which are limited to specific makes of appliances sold by the utility and price and terms, thereof, without referring to the value or advantages of utility service, shall be considered as merchandise advertising and the cost shall be charged to Costs and Expenses of Merchandising, Jobbing and Contract Work, Account 416.

Note B: Advertisements which substantially mention or refer to the value or advantages of utility service, together with specific reference to makes of appliance sold by the utility and the price, and terms, thereof, and designed for the joint purpose of increasing the use of utility service and the sales of appliances, shall be considered as a combination advertisement and the costs shall be distributed between this account and Account 416 on the basis of space, time, or other proportional factors.

Note C: Exclude from this account and charge to Account 930.2, Miscellaneous General Expenses the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character.

Also exclude all institutional or goodwill advertising. (See Account 930.1, General Advertising Expenses.)

916 *Miscellaneous Sales Expenses*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, materials used, and expenses incurred in connection with sales activities, except merchandising, which are not includible in other sales expense accounts.

Items

Labor:

1. General clerical and stenographic work not assigned to specific functions.

2. Special analysis of customer accounts and other statistical work for sales purposes not a part of the regular customer accounting and billing routine.

3. Miscellaneous labor.

Taxes:

1. Federal and state unemployment.

2. F.I.C.A.

3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.

7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

8. Fees and expenses of claim investigators.

9. Payment of awards to claimants for court costs and attorneys' services.

10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.

11. Compensation payments under workmen's compensation laws.

12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)

13. Cost of safety, accident prevention, and similar educational activities.

Materials and Expenses:

1. Communication service.

2. Printing, postage, office supplies, and expenses applicable to sales activities, except those chargeable to Account 913, Advertising Expenses.

9. Section 1767.31 is proposed to be amended by revising Accounts 920, 924, 925, 926, 930.1, 930.2, and 935 to read as follows:

§ 1767.31 Administrative and general expenses.

* * * * *

920 *Administrative and General Salaries*

A. This account shall include the compensation (salaries, bonuses, employee pensions and benefits, social security and other payroll taxes, and other consideration for services, but not including directors' fees) of officers, executives, and other employees of the utility properly chargeable to utility operations and not chargeable directly to a particular operating function.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

* * * * *

924 *Property Insurance*

A. This account shall include the cost of insurance or reserve accruals to protect the utility against losses and damages to owned or leased property used in its utility operations. It shall

also include the cost of labor, employee pensions and benefits, social security and other payroll taxes and the related supplies and expenses incurred in property insurance activities.

B. Recoveries from insurance companies or others for property damages shall be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

C. Records shall be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies shall be credited to the accounts to which the insurance premiums were charged.

Items

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

Note A: The cost of insurance or reserve accruals capitalized, shall be charged to construction and retirement either directly or by transfers to construction and retirement work orders from this account.

Note B: The cost of insurance or reserve accruals for the following classes of property shall be charged as indicated:

1. Materials, supplies, and stores equipment to Account 163, Stores Expense Undistributed, or appropriate materials account.

2. Transportation and other general equipment to appropriate clearing accounts that may be maintained.

3. Electric plant leased to others to Account 413, Expenses of Electric Plant Leased to Others.

4. Nonutility property to the appropriate nonutility income account.

5. Merchandise and jobbing property to Account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

Note C: The cost of labor, employee pensions and benefits, social security and other payroll taxes, and the related supplies and expenses of administrative and general employees who are only incidentally engaged in property insurance work may be included in Account 920 and Account 921, as appropriate.

Note D: The cost of insurance or reserve accruals applicable to the various utility

functions shall be charged to the appropriate miscellaneous operations or administrative expense accounts either directly or by transfers from this account.

925 *Injuries and Damages*

A. This account shall include the cost of insurance or reserve accruals to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims. It shall also include the cost of labor, employee pensions and benefits, social security and other payroll taxes, related supplies, and expenses incurred in injuries and damages activities.

B. Reimbursements from insurance companies or others for expenses charged hereto on account of injuries, damages, and insurance dividends or refunds shall be credited to this account.

Items

1. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.

2. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

3. Fees and expenses of claim investigators.

4. Payment of awards to claimants for court costs and attorneys' services.

5. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.

6. Compensation payments under workmen's compensation laws.

7. Compensation paid while incapacitated as the result of occupational injuries. (See NOTE A.)

8. Cost of safety, accident prevention, and similar educational activities.

Note A: Payments to or in behalf of employees for accident or death benefits, hospital expenses, medical expenses, or for salaries while incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, shall be charged to Account 926, Employee Pensions and Benefits. (See also Note B of Account 926.)

Note B: The cost of injuries and damages or reserve accruals capitalized shall be charged to construction and retirement activities either directly or by transfers from this account to the applicable construction and retirement work orders.

Note C: The cost of insurance or reserve accruals applicable to the various utility

functions shall be charged to the appropriate miscellaneous operations or administrative expense accounts either directly or by transfers from this account.

Note D: Exclude herefrom the time and expenses of employees (except those engaged in injuries and damages activities) spent in attendance at safety and accident prevention educational meetings, if occurring during the regular work period.

Note E: The cost of labor, employee pensions and benefits, social security and other payroll taxes, and the related supplies and expenses of administrative and general employees who are only incidentally engaged in injuries and damages activities, may be included in Account 920 and Account 921, as appropriate.

926 *Employee Pensions and Benefits*

A. This account shall include pensions paid to or on behalf of retired employees or accruals to provide for pensions or payments for the purchase of annuities for this purpose, when the utility has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes and payments for employee accident, sickness, hospital, and death benefits, or insurance therefor. Include, also, expenses incurred in medical, educational, or recreational activities for the benefit of employees and administrative expenses in connection with employee pensions and benefits.

B. The utility shall maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to RUS of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

C. There shall be credited to this account, the portion of pensions and benefits expenses which is applicable to nonutility operations, the specific functional operations, maintenance, and administrative expense accounts, and to construction and retirement activities unless such amounts are distributed directly to the accounts involved and are not included herein in the first instance.

D. Records in support of this account shall be so kept that the total pensions expense, the total benefits expense, the administrative expenses included herein, and the amounts of pensions and benefits expenses transferred to the operations, maintenance, administrative, construction or retirement accounts will be readily available.

Items

1. Payment of pensions to retirees on a nonaccrual basis.

2. Accruals for or payments to pension funds or to insurance companies for pension purposes.

3. Group and life insurance premiums (credit dividends received).

4. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

5. Payments for accident, sickness, hospital, and death benefits or insurance.

6. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

7. Expenses in connection with educational and recreational activities for the benefit of employees.

Note A: The cost of labor, employee pensions and benefits, social security and other payroll taxes, and the related supplies and expenses of administrative and general employees who are only incidentally engaged in employee pension and benefit activities may be included in Account 920 and Account 921, as appropriate.

Note B: Salaries paid to employees during periods of nonoccupational sickness may be charged to the appropriate labor account rather than to employee benefits.

* * * * *

930.1 *General Advertising Expenses*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in advertising and related activities, the cost of which by their content and purpose are not provided for elsewhere.

Items

Labor:

1. Supervision.

2. Preparing advertising material for newspapers, periodicals, and billboards and preparing or conducting motion pictures, radio, and television programs.

3. Preparing booklets and bulletins used in direct mail advertising.

4. Preparing window and other displays.

5. Clerical and stenographic work.

6. Investigating and employing advertising agencies, selecting media, and conducting negotiations in connection with the placement and subject matter of advertising.

Taxes:

1. Federal and state unemployment.

2. F.I.C.A.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.

2. Group and life insurance premiums (credit dividends received).

3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

4. Payments for accident, sickness, hospital, and death benefits or insurance.

5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

6. Expenses in connection with educational and recreational activities for the benefit of employees.

Materials and Expenses:

1. Advertising in newspapers, periodicals, billboards, and radios.
2. Advertising matter such as posters, bulletins, booklets, and related items.
3. Fees and expenses of advertising agencies and commercial artists.
4. Postage and direct mail advertising.
5. Printing of booklets, dodgers, and bulletins.
6. Supplies and expenses in preparing advertising materials.
7. Office supplies and expenses.

Note A: Properly includible in this account is the cost of advertising activities on a local or national basis of a goodwill or institutional nature, which is primarily designed to improve the image of the utility or the industry, including advertisements which inform the public concerning matters affecting the company's operations, such as, the cost of providing service, the company's efforts to improve the quality of service, and the company's efforts to improve and protect the environment. Entries relating to advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of the advertising message shall be readily available.

Note B: Exclude from this account and include in Account 426.4, Expenditures for Certain Civic, Political and Related Activities, expenses for advertising activities, which are designed to solicit public support or the support of public officials in matters of a political nature.

930.2 *Miscellaneous General Expenses*

This account shall include the cost of labor, employee pensions and benefits, social security and other payroll taxes, insurance, property taxes, and expenses incurred in connection with the general management of the utility not provided for elsewhere.

Items

Labor:

1. Miscellaneous labor not elsewhere provided for.

Taxes:

1. Federal and state unemployment.
2. F.I.C.A.
3. Property.

Employee Pensions and Benefits: The portion of employee pensions and benefits, based upon direct labor hours, applicable to the labor items detailed above, including:

1. Accruals for or payments to pension funds or to insurance companies for pension purposes.
2. Group and life insurance premiums (credit dividends received).
3. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
4. Payments for accident, sickness, hospital, and death benefits or insurance.
5. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.
6. Expenses in connection with educational and recreational activities for the benefit of employees.

Insurance:

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.
2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.
3. Special costs incurred in procuring insurance.
4. Insurance inspection service.
5. Insurance counsel, brokerage fees, and expenses.
6. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.
7. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.
8. Fees and expenses of claim investigators.
9. Payment of awards to claimants for court costs and attorneys' services.
10. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.
11. Compensation payments under workmen's compensation laws.

12. Compensation paid while incapacitated as the result of occupational injuries. (See Account 924, Note A.)

13. Cost of safety, accident prevention, and similar educational activities.

Expenses:

1. Industry association dues for company memberships.
2. Contributions for conventions and meetings of the industry.
3. Research, development, and demonstration expenses not charged to other operation and maintenance expense accounts on a functional basis.
4. Communication service not chargeable to other accounts.
5. Trustee, registrar, and transfer agent fees and expenses.
6. Stockholders meeting expenses.
7. Dividend and other financial notices.
8. Printing and mailing dividend checks.
9. Directors' fees and expenses.
10. Publishing and distributing annual reports to stockholders.
11. Public notices of financial, operating, and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.

* * * * *

935 *Maintenance of General Plant*

A. This account shall include the cost assignable to customer accounts, sales, administrative, and general functions of labor, employee pensions and benefits, social security and other payroll taxes, materials used, and expenses incurred in the maintenance of property, the book cost of which is includable in Account 390, Structures and Improvements; Account 391, Office Furniture and Equipment; Account 397, Communication Equipment; and Account 398, Miscellaneous Equipment. (See § 1767.17(b).)

B. Maintenance expenses on office furniture and equipment used elsewhere than in general, commercial, and sales offices shall be charged to the following accounts:

1. Steam Power Generation, Account 514.
2. Nuclear Power Generation, Account 532.
3. Hydraulic Power Generation, Account 545.
4. Other Power Generation, Account 554.
5. Transmission, Account 573.
6. Distribution, Account 598.
7. Merchandise and Jobbing, Account 416.
8. Garages, Shops, etc., Appropriate clearing account, if used.

Note: Maintenance of plant included in other general equipment accounts shall be included herein unless charged to clearing accounts or to the particular functional maintenance expense account indicated by the use of the equipment.

10. In § 1767.41, the introductory text preceding the Numerical Index is proposed to be revised to read as follows:

§ 1767.41 Accounting methods and procedures required of all RUS borrowers.

All RUS borrowers shall maintain and keep their books of accounts and all other books and records which support the entries in such books of accounts in accordance with the accounting principles prescribed in this section. Interpretations Nos. 133, 134, 137, 403, 404, 602, 606, 618, 627, 628, and 629 adopt and implement the provisions of standards issued by the Financial Accounting Standards Board (FASB). Each interpretation includes a synopsis of the requirements of the standard as well as specific accounting requirements and interpretations required by RUS. The synopsis provides general information to assist borrowers in determining whether the standard applies to an individual cooperative's operations. The synopsis is not intended to change the requirements of the FASB standards unless it is set forth in the section entitled RUS Accounting Requirements in each interpretation. If a particular borrower believes a conflict exists between the FASB standard and an RUS interpretation, the borrower shall request an interpretation of this part 1767 under the provisions of § 1767.14. The request for interpretation shall specify the specific conflict that exists and the borrower's specific circumstances that necessitate the interpretation.

* * * * *

11–20. In § 1767.41, make the following changes:

a. In the Numerical Index, the entries No. 137, Impairment of Long-Lived Assets; No. 138, Automatic Meter Reading Systems—Turtles; No. 139, Global Positioning Systems; No. 140, Radio-Based Automatic Meter Reading Systems; No. 630, Split Dollar Life Insurance; and No. 631, Special Early Retirement Plan, are proposed to be added in numerical order.

b. In the Subject Matter Index listing under "A", entries for "Automatic Meter Reading Systems—Radio-Based", and "Automatic Meter Reading Systems—Turtles", are proposed to be added in alphabetical order.

c. In the Subject Matter Index listing under "E", an entry for "Early

Retirement Plan," is proposed to be added in alphabetical order.

d. In the Subject Matter Index listing under "G", an entry for "Global Positioning Systems", is proposed to be added in alphabetical order.

e. In the Subject Matter Index listing under "I", entries for "Impairment of Long-Lived Assets," and "Insurance—Split Dollar," are proposed to be added in alphabetical order.

f. In the Subject Matter Index listing under "L", entries for "Life Insurance—Split Dollar," and "Long-Lived Assets—Impairment," are proposed to be added in alphabetical order.

g. In the Subject Matter Index listing under "M", entries for "Meter Reading Systems—Radio-Based", and "Meter Reading Systems—Turtles", are proposed to be added in alphabetical order.

h. In the Subject Matter Index listing under "R", an entry for "Radio-Based Automatic Meter Reading Systems", is proposed to be added in alphabetical order.

i. In the Subject Matter Index listing under "S", entries for "Special Early Retirement Plan," and "Split Dollar Life Insurance," are proposed to be added in alphabetical order.

j. In the Subject Matter Index listing under "T", an entry for "Turtles—Automatic Meter Reading Systems," is proposed to be added in alphabetical order.

The additions read as follows:

* * * * *

NUMERICAL INDEX

Number	Title
* * * * *	
137	Impairment of Long-Lived Assets.
138	Automatic Meter Reading Systems—Turtles.
139	Global Positioning Systems.
140	Radio-Based Automatic Meter Reading Systems.
* * * * *	
630	Split Dollar Life Insurance.
631	Special Early Retirement Plan.

SUBJECT MATTER INDEX

	Number
A	
* * * * *	
Automatic Meter Reading Systems—Radio-Based	140
Automatic Meter Reading Systems—Turtle	138

SUBJECT MATTER INDEX—Continued

	Number
* * * * *	
E	
Early Retirement Plan	631
* * * * *	
G	
* * * * *	
Global Positioning Systems	139
* * * * *	
I	
Impairment of Long-Lived Assets ...	137
* * * * *	
Insurance—Split Dollar	630
* * * * *	
L	
* * * * *	
Life Insurance—Split Dollar	630
* * * * *	
Long-Lived Assets—Impairment	137
M	
* * * * *	
Meter Reading Systems—Radio-Based	140
Meter Reading Systems—Turtles ...	138
* * * * *	
R	
Radio-Based Automatic Meter Reading Systems	138
* * * * *	
S	
* * * * *	
Special Early Retirement Plan	631
* * * * *	
Split Dollar Life Insurance	630
* * * * *	
T	
* * * * *	
Turtles—Automatic Meter Reading Systems	
* * * * *	

21. In § 1767.41, Interpretation No. 104 is proposed to be revised to read as follows:

* * * * *

104 Terminal Facilities

Borrowers are sometimes required to construct terminal facilities in the transmission line of another utility in order to receive power from their power supplier. The document executed between the borrower and the utility is normally referred to as a "License Agreement". The license agreement may

stipulate that certain items of the terminal facilities are to be transferred to, and become the property of, the other utility upon completion of the construction. The accounting for this type of transaction shall be as follows:

1. All construction costs incurred shall be charged to a work order. Upon completion of the construction and accumulation of all costs, the cost of the facilities that become the property of another utility shall be transferred from construction work-in-progress to Account 303, Miscellaneous Intangible Plant. The cost of the plant for which the borrower retains title shall be charged to the appropriate plant accounts.

2. The cost of the facilities recorded in Account 303 shall be amortized to Account 405, Amortization of Other Electric Plant, over the estimated useful service life of the plant. If the related contract or contracts for this power supply are terminated, the unamortized balance shall be expensed, in the current period, in Account 557.

* * * * *

22. In § 1767.41, Interpretation Nos. 137, 138, 139 and 140 are proposed to be added to read as follows:

* * * * *

137 Impairment of Long-Lived Assets

Statement of Financial Accounting Standards No. 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of (Statement No. 121), requires reporting entities to review all long-lived assets and certain identifiable intangibles that are to be held, used, or disposed of by that entity for impairment whenever events and changes in circumstances indicate that the carrying amount of the asset may not be recoverable. If the sum of the expected future cash flows (undiscounted and without interest charges) is less than the carrying value of the asset, the entity must recognize an impairment loss. The impairment loss is measured as the amount by which the carrying amount of the asset exceeds the fair value of the asset. The impairment loss is reported as a component of income from continuing operations before income taxes for entities presenting an income statement and in the statement of activities of not-for-profit organizations. Statement No. 121 does not apply to assets included in the scope of Statement of Financial Accounting Standards No. 90, Regulated Enterprises—Accounting for Abandonments and Disallowances of Plant Costs.

Assets To Be Held or Used

Entities are required to review long-lived assets and certain identifiable intangibles whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. For example:

1. A significant decrease in the market value of an asset;
2. A significant change in the extent or manner in which an asset is used;
3. A significant physical change in an asset;
4. A significant adverse change in legal factors or in the business climate that could affect the value of an asset;
5. An adverse action or assessment by a regulator;
6. An accumulation of costs significantly in excess of the amount originally expected to acquire or construct an asset; and
7. A current period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continued losses associated with an asset used for the purpose of producing revenue.

The impairment of the asset is measured by estimating the future cash flows expected to result from the use of the asset and its disposition. Assets are grouped at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows of other groups of assets. Future cash flows are those cash inflows that are expected to be generated by the asset less the cash outflows expected to be necessary to maintain those inflows. If the future cash flows (undiscounted and without interest charges) are less than the carrying value of the asset, an impairment loss must be recognized. If the expected future cash flows are greater than the carrying value of the asset, no impairment loss exists.

The impairment loss is the amount by which the carrying amount (acquisition cost less accumulated depreciation) of the asset exceeds the fair value of the asset. The fair value of the asset is the amount for which the asset could be bought or sold in an arms-length transaction between willing parties. A quoted market price is the best evidence of fair value. If this information is not available, the fair value should be based upon the best information available. Consideration should be given to the price of similar assets and valuation techniques such as the present value of the expected future cash flows discounted at a rate representative of the risk involved, option-pricing models, matrix pricing, option-adjusted spread models, and fundamental analysis. All

available information should be considered when using the above pricing techniques.

If an impairment is recognized, the carrying value of the asset is reduced to the lower of its fair value or its carrying value and, if depreciable, depreciated over the remaining useful life. Previously recognized impairment losses cannot be restored. If the asset was acquired in a business combination and there is goodwill resulting from the transaction, the goodwill is included in the asset grouping and reduced or eliminated before any adjustment is made to the carrying value of the asset.

The following financial statement disclosures are required in the period in which the impairment is recognized:

1. A description of the impaired assets and the facts and circumstances surrounding the impairment;
2. The amount of the impairment and how fair value was determined;
3. The caption in the income statement or the statement of activities in which the impairment loss is aggregated if that loss has not been presented as a separate caption or reported parenthetically on the face of the statement; and
4. If applicable, the business segment(s) affected.

Assets To Be Disposed

Statement No. 121 also applies to all long-lived assets and certain identifiable intangibles for which management, having the authority to approve the action, has committed to a plan of disposal except those assets covered by APB No. 30, Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions. An asset to be disposed of is carried at the lower of its carrying amount (acquisition cost less accumulated depreciation) or its fair value less cost to sell.

The fair value of the asset to be disposed of is computed in the same manner as that for an asset to be held or used by the entity. Selling costs include the incremental direct cost to transact the sale—broker commissions, legal fees, title transfer, and other closing costs that must be incurred before legal title can be transferred. Costs such as insurance, security service, and utilities are generally excluded unless these costs are part of a contractual agreement that obligates the entity to incur such costs in the future. If the asset's fair value is based upon current market price or the current selling price for a similar asset, the fair value is considered a current amount

and is not discounted. If, however, the fair value is based upon discounted expected future cash flows and if the sale is to occur beyond one year, the cost to sell must also be discounted. Assets covered by this statement are not depreciated (amortized) while being held for disposal.

Subsequent revisions in estimates of fair value less cost to sell are reported as adjustments to the carrying amount of the asset to be disposed of as long as the carrying amount of the asset does not exceed the original carrying amount.

The following financial statement disclosures are required in the period in which the impairment is recognized:

1. A description of the assets to be disposed of including the facts and circumstances leading to the expected disposal, the expected disposal date, and the carrying amount of those assets;
2. If applicable, the business segment(s) in which the assets to be disposed of are held;
3. The amount, if any, of the impairment loss resulting from the adoption of this statement;
4. The gain or loss, if any, resulting from subsequent revisions in the estimates of fair value less cost to sell;
5. The caption in the income statement or statement of activities in which the gains or losses are aggregated if those gains or losses have not been presented as a separate caption or reported parenthetically on the face of the statement; and
6. The results of operations for assets to be disposed of to the extent that those results are included in the entity's results of operations for the period and can be identified.

Accounting Requirements

All borrowers must adopt the accounting prescribed by Statement No. 121.

Effective Date and Implementation

Statement No. 121 is effective for financial statements for fiscal years beginning after December 15, 1995. Impairment losses resulting from the application of this statement to assets that are held or used by the entity must be reported in the period in which the recognition criteria are first applied and met. Impairment losses attributable to assets to be disposed of must be reported as the cumulative effect of a change in accounting principle as prescribed in Accounting Principles Board Opinion No. 20, Accounting Changes.

Accounting Journal Entries—Implementation Date

If a borrower has impaired assets that are held or used at the implementation date, the following entry should be recorded:

Dr. 426.5, Other Deductions

Cr. 300 Series of Accounts, Plant Accounts
To record the adoption of Statement No. 121 for the impairment of assets that are held or used.

If a borrower has impaired assets to be disposed of at the implementation date, the following entry should be recorded:

Dr. 435.1, Cumulative Effect on Prior Years of a Change in Accounting Principle

Cr. 300 Series—Plant Accounts
To record the adoption of Statement No. 121 for assets that are to be disposed.

Accounting Journal Entries—Subsequent to Implementation Date

If an asset that is either held, used or to be disposed of becomes impaired, the following entry should be recorded:

Dr. 426.5, Other Deductions

Cr. 300 Series—Plant Accounts
To record the impairment of a plant asset.

If a borrower makes a subsequent revision in the estimate of the fair value less the cost to sell of an asset to be disposed of, the following entry should be recorded:

Dr. 300 Series—Plant Accounts

Cr. 421, Miscellaneous Nonoperating Income
To revise the fair value of an asset to be disposed.

138 Automatic Meter Reading Systems—Turtles

Automatic meter reading systems were developed from technology called power line carrier communication systems. One such system, developed by Hunt Technologies, Inc., is called by its brand name, the Turtle system. In addition to its function as an automated reading device, the Turtle can provide outage detection, power failure counts, and other potential applications. The current Turtle system does not have the capability for applications such as collection of load survey or interval data. A Turtle system consists of:

1. A Meter reader mounted (retrofitted) inside the meter;
2. A receiver located in each substation; and
3. Monitoring and programming equipment (software and personal computer) usually located in the headquarters building.

The system transmits continuous information one way from the meter to a receiver located in the substation. The receiver constantly monitors every Turtle meter served by the substation.

The substation receiver can be sized to monitor up to 3,000 Turtle meter readers at the same time. The data is then transmitted to the headquarters monitoring equipment via telephone line or an equivalent communication system.

The technical literature and other information provided by the manufacturer indicates that this system can only be used for remote meter reading, outage detection, power failure counts, and phase identification. At this time, there is no indication that the system supports other functions such as home security. Therefore, the accounting prescribed for Turtle systems remote meter reading devices and support equipment relates only to electric utility operations.

Accounting Requirements

The function and location of the equipment are the primary factors in determining the account in which the equipment shall be recorded. The components of the Turtle system shall be accounted for as follows:

1. *Meter Reader Units.* The cost of the meter reader and retrofitting the meter with the meter reader units shall be capitalized to the cost of the existing meter in Account 370, Meters. Any associated operating expenses shall be charged to Account 586, Meter Expenses, with maintenance expenses charged to Account 597, Maintenance of Meters.

2. *Turtle Receivers.* The cost of substation receiver(s) shall be recorded in Account 362, Station Equipment. Any associated operating expenses shall be charged to Account 582, Station Expenses, with maintenance expenses charged to Account 592, Maintenance of Station Equipment.

3. *Monitoring and Programming Equipment.* Since the computer and associated software are provided by the manufacturer of the Turtle system, it is assumed that the computer system is dedicated to the remote meter reading function and not used in general utility operations. The cost of the computer equipment and software shall, therefore, be charged to Account 362, Station Equipment. Operating expenses shall be charged to Account 582, Station Expenses, with maintenance expenses charged to Account 592, Maintenance of Station Equipment.

139 Global Positioning Systems

The Global Positioning System (GPS) is a worldwide radio-navigation system formed from a network of 24 satellites and their ground stations. Utilities are using this advanced technology geographic data collection system to

update and modernize their system maps. GPS uses a system of satellites orbiting the earth to establish plant locations with pinpoint accuracy. By triangulating from three satellites and using radio signals to measure distances and locate items, system-wide maps can be created of the utility's service area. A field inventory is then taken of the utility's plant and plotted onto the map. The GPS consists of base station equipment, remote station equipment, the GPS program, and mapping conversion software.

All equipment associated with GPS is dedicated to the mapping effort. The base station is installed at a fixed location and ties satellite measurements into a solid local reference. The remote station is a portable receiver that is taken into the field to determine locations and is moved from site to site. The GPS program is the application software that operates the station equipment and is used by layout technicians to gather information of existing and new facilities in the field. The conversion software is used for converting the GPS and inventory information gathered in the field into a form usable by the mapping program.

Accounting Requirements

The function and location of the equipment are the primary factors in determining the account in which the equipment shall be recorded. The components of the GPS shall be accounted for as follows:

1. *Remote and Base Station Equipment.* The cost of the equipment, both remote and fixed, shall be capitalized in a subaccount of Account 391, Office Furniture and Equipment.

2. *GPS Program and Conversion Software for Mapping.* The cost of GPS program and conversion software shall be capitalized in a subaccount of Account 391, Office Furniture and Equipment.

3. *GPS/GIS Field Inventory of System.* The cost of performing a GPS/GIS survey and field inventory of the existing system by either a consultant or the utility's own forces, shall be charged to Account 588, Miscellaneous Distribution Expenses.

140 Radio-Based Automatic Meter Reading Systems

Radio-based automatic meter reading technology allows meters equipped with a low-power radio device called an ERT (Encoder, Receiver, Transmitter) to be read from a remote location. The ERT device can either be retrofitted to an existing meter or purchased installed in a new meter. The ERT device "encodes" energy consumption and transmits this

information to a radio transceiver equipped handheld computer. The data collected and stored in the handheld computer is then uploaded to a billing computer using specialized software for that purpose.

Accounting Requirements

The function and location of the equipment are the primary factors in determining the account in which the equipment shall be recorded. The components of the radio-based automatic meter reading system shall be accounted for as follows:

1. *Meter Reader Units.* The cost of the meter reader encoding device and retrofitting the meter with the meter reader unit shall be capitalized to the cost of the existing meter in Account 370, Meters. Any associated operating expenses shall be charged to Account 586, Meter Expenses, with maintenance expenses charged to Account 597, Maintenance of Meters. Meters either fitted or retrofitted with the device shall be segregated as separate retirement units in the continuing property records.

2. *Handheld Computer.* The primary function of the hand held computer is to meter energy usage for billing purposes; therefore, the cost of the handheld computer(s) and any associated devices required to upload the data to the billing computer, shall be recorded in Account 370, Meters.

3. *Upload Software.* Since the application software required to upload the energy usage to the billing computer is related to the billing function, the cost of the software shall be capitalized in a subaccount of Account 391, Office Furniture and Equipment.

23. In Section 1767.41, Interpretations Nos. 601, 602, 603, 604, 606, 608, 618, 627, and 628 are proposed to be revised to read as follows:

* * * * *

601 Employee Benefits

The costs of employees' fringe benefits (hospitalization, retirement, holiday, sick and vacation pay, etc.) shall be accumulated in an appropriate clearing account and allocated monthly on the basis of payroll. Vacation costs shall be accrued monthly by appropriate credits to an accrual account. These monthly accruals shall be allocated on the basis of direct payroll costs to construction, retirement, and the applicable operations, maintenance, and administrative expense accounts.

Sick leave costs are not normally accrued unless the employee is entitled to be paid for accumulated sick leave at

the termination of employment. Salary payments and the associated employee pensions and benefits and social security and other payroll taxes for an employee who is actually sick shall be charged to the same account or accounts to which his or her salary is normally charged.

602 Compensated Absences

Statement of Financial Accounting Standards No. 43, Accounting for Compensated Absences (Statement No. 43), requires employers to accrue a liability as an employee earns the right to be paid for future absences. Four criteria were established for this accrual:

1. The employer's obligation for payment for future absences is attributable to employees' services already performed.

2. The obligation relates to employee rights which vest or accumulate. Vested rights are considered those for which the employer is obligated to make payment even if the employee terminates. Rights which accumulate are those earned, but unused rights to compensated absences which may be carried forward to one or more periods subsequent to the period in which they are earned.

3. Payment of the compensation is probable.

4. The amount can be reasonably estimated.

A company's liability shall be estimated based upon payments it expects to make as a result of employees' work already performed. If a reasonable estimate cannot be made, the company shall disclose that fact in the financial statements.

Statement No. 43 does not apply to severance or termination pay, postretirement benefits, deferred compensation, stock or stock options, group insurance, or other long-term fringe benefits.

The entries required to account for the accrual of compensated absences are as follows:

Dr. 435.1, Cumulative Effect on Prior Years of a Change in Accounting Principle

Cr. 242.3, Accrued Employees' Vacation and Holidays

To record the liability for benefits earned in prior years.

Dr. 107, Construction Work in Progress

Dr. 108.8, Retirement Work in Progress

Dr. Various Operations, Maintenance, and Administrative Expense Accounts

Cr. 242.3, Accrued Employees Vacation and Holidays

To record the liability for benefits earned in the current period.

603 *Employee Retirement and Group Insurance*

Some borrowers have group insurance or retirement plans or both for their employees. As a general rule the cost of these programs is borne partially by the cooperative and partially by its employees. The cooperative may pay the full cost in advance and recover the employee's share through payroll deductions. The accounting for these transactions is as follows:

1. The cooperative's advanced payment of premiums on insurance and retirement agreements shall be charged to Account 165, Prepayments, for the employers portion, and Account 143, Other Accounts Receivable, for the employee's portion.

2. The cost of the employer's portion of a retirement and group insurance program shall be charged to construction and retirement activities and the applicable operations, maintenance, and administrative expense accounts based upon direct labor hours.

604 *Deferred Compensation*

Many utilities participate in the NRECA Deferred Compensation Program. Based upon the provisions of the program, the following accounting entries shall be made:

Dr. 186.XX, Miscellaneous Deferred Debits—Deferred Compensation
Cr. 228.3, Accumulated Provision for Pensions and Benefits

To increase the deferred compensation provision by the amount of the annual deposit to NRECA's Deferred Compensation Fund.

Dr. 128, Other Special Funds—Deferred Compensation

Cr. 131.1, Cash—General

To record the annual deposit to NRECA's Deferred Compensation Fund.

Dr. Construction Work in Progress, Retirement Work in Progress, or the Various Operations, Maintenance, and Administrative Expense Accounts, as appropriate.

Cr. 186.XX, Miscellaneous Deferred Debits—Deferred Compensation

To record monthly accrual of deferred compensation.

NOTE: If an employee joins the deferred compensation program during the year, use entry #1 to record the additional deposit to the NRECA Deferred Compensation Fund and increase the monthly accrual in entry #2 to reflect this deposit.

NRECA provides borrowers that participate in the deferred compensation program with an annual account statement disclosing the activity for each Homestead Fund investment including the number of shares owned, interest income, dividend income, capital gains/losses, and the

value of the shares owned at statement date. Funds may be invested in the Short-term Bond Fund, the Value Fund, the Short-term Government Securities Fund, and the Daily Income Fund. Depending upon the Homestead Fund selected, invested funds may earn interest and dividend income and may experience unrealized holding gains or losses. Based upon the information provided on the annual statement, the following journal entries shall be recorded to recognize the increase or decrease in the fund assets:

Dr. 128, Other Special Funds—Deferred Compensation

Cr. 419, Interest and Dividend Income

Cr. 421, Miscellaneous Nonoperating Income

To record an increase in the fund value as of December 31, 19xx, resulting from interest and dividend income and from unrecognized holding gains on trading securities.

Dr. Various Operations, Maintenance, and Administrative Expense Accounts

Cr. 228.3, Accumulated Provision for Pensions and Benefits

To record an increase in the liability to the employee resulting from an increase in the investment account.

Dr. 426.5, Other Deductions

Cr. 128, Other Special Funds—Deferred Compensation

To record a decrease in fund value as of December 31, 19xx, resulting from unrecognized holding losses on trading securities.

Dr. 228.3, Accumulated Provision for Pensions and Benefits

Cr. Various Operations, Maintenance, and Administrative Expense Accounts

To record a decrease in the liability to the employee resulting from a decrease in the investment account.

Payments made to participating employees because of retirement or separation for other reasons shall be recorded using the following entries:

Dr. 131.1, Cash—General

Cr. 128, Other Special Funds—Deferred Compensation

To record the receipt of funds from NRECA. and

Dr. 228.3, Accumulated Provision for Pensions and Benefits

Cr. 131.1, Cash—General

To record payment to employee for deferred compensation.

If the borrower has elected to bear the market risk of the funds which guarantee that the amount of money an employee receives will not be less than the amount of salary deferred, the following entry shall be recorded if total

payment(s) from NRECA are less than the amount of salary deferred:

Dr. Various Operations, Maintenance, and Administrative Expense Accounts

Cr. 131.1, Cash—General

To record payment to employee for deferred compensation. Payment was made because amount returned did not equal salary deferred.

Appropriate disclosure of the terms of the program shall be made in the notes to the financial statements.

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606 *Pension Costs*

With the issuance of Statement of Financial Accounting Standards No. 87, Employers' Accounting for Pensions (Statement No. 87), there have been significant changes in the accounting and reporting requirements relating to pension costs. This section will highlight the accounting and reporting requirements for the major types of pension plans. It should be noted, however, that the definitions and accounting procedures outlined in this section relate to financial accounting and they may differ from those used for tax accounting.

Defined Benefit Pension Plans

A defined benefit pension plan is a plan that defines an amount of pension benefit to be provided, usually as a function of one or more factors such as age, years of service, or compensation. In a defined benefit plan, the employer promises to provide, in addition to current wages, retirement income payments in future years after the employee retires or terminates service. Generally, the amount of benefit to be paid depends upon a number of future events that are incorporated into the plan's benefit formula, after including how long the employee and any survivors live, how many years of service the employee renders, and the employee's compensation in the years immediately before retirement or termination.

Under a defined benefit plan, the determination of pension costs, assets, liabilities, and the disclosures in the financial statements require many calculations and assumptions to be made. This section provides a general overview of the accounting and reporting requirements associated with a defined benefit pension plan. Consult Statement No. 87 for guidance in making the necessary calculations and assumption.

The accounting and reporting requirements related to a defined benefit pension plan are as follows:

1. The following components shall be included in the periodic recognition of

net pension cost by an employer sponsoring a defined benefit pension plan:

a. The service cost component recognized in a period shall be determined as the actuarial present value of benefits attributed by the pension plan formula to employee service during that period. The measurement of the service cost component requires use of an attribution method and assumptions.

b. The interest cost component recognized in a period shall be determined as the increase in the projected benefit obligation due to the passage of time. Measuring the projected benefit obligation as a present value requires accrual of an interest cost at rates equal to the assumed discount rates.

c. For a funded plan, the actual return on plan assets, if any, shall be determined based upon the fair value of plan assets at the beginning and the end of the period, adjusted for contributions and benefit payments.

d. Plan amendments (including initiation of a plan) often include provisions that grant increased benefits based upon services rendered in prior period. Because plan amendments are granted with the expectation that the employer will realize economic benefits in future period, Statement No. 87 does not require the cost of providing such retroactive benefits (prior service cost) to be included in net periodic pension cost entirely in the year of the amendment but provides for recognition during the future service periods of those employees active at the date of the amendment who are expected to receive benefits under the plan.

The cost of retroactive benefits (including benefits that are granted to retirees) is the increase in the projected benefit obligation at the date of the amendment. Except as noted below, prior service cost shall be amortized by assigning an equal amount to each future period of service of each employee active at the date of the amendments who is expected to receive benefits under the plan. If all or almost all of the plan's participants are inactive, the cost of retroactive plan amendments affecting benefits of inactive participants shall be amortized based upon the remaining life expectancy of those participants rather than the remaining service period.

To reduce the complexity and detail of the computations require, consistent use of an alternative amortization approach that more rapidly reduces the unrecognized cost of retroactive amendments is acceptable. For example, a straight-line amortization of the cost

over the average remaining service period of employees expected to receive benefits under the plan is acceptable. The alternative method used shall be disclosed.

In some situations, a history of regular plan amendments and other evidence may indicate that the period during which the employee expects to realize economic benefits from an amendment granting retroactive benefits is shorter than the entire remaining service period of the active employees. Identification of such situations requires an assessment of the individual circumstances and the substance of the particular plan situation. In those circumstances, the amortization of prior service cost shall be accelerated to reflect the more rapid expiration of the employer's economic benefits and to recognize the cost in the periods benefited.

A plan amendment can reduce rather than increase the projected benefit obligation. Such a reduction shall be used to reduce an existing unrecognized prior service cost, and the excess, if any, shall be amortized on the same basis as the cost of benefit increases.

e. Gains and losses are changes in the amount of either the projected benefit obligation or plan assets resulting from experience different from that assumed and changes in assumptions. Gains and losses include amounts that have been realized. Because gains and losses may reflect refinements in estimates as well as real changes in economic values and because some gains in one period may be offset by losses in another or vice versa, the recognition of gains and losses as components of net pension cost of the period in which they arise, is not required.

The expected return on plan assets shall be determined based upon the expected long-term rate of return on plan assets and the market-related value of plan assets. The market-related value of plan assets shall be either fair value or a calculated value that recognizes changes in fair value in a systematic and rational manner over not more than 5 years. Different ways of calculating market-related value may be used for different classes of assets but the manner of determining market-related value shall be applied consistently from year to year for each asset class.

Asset gains and losses are the differences between the actual return on assets during a period and the expected return on assets for that period. Assets gains and losses include both changes reflected in the market-related value of assets and changes not yet reflected in the market-related value (that is, the difference between the fair value of

assets and the market-related value). Asset gains and losses not yet reflected in market-related values are not required to be amortized.

As a minimum, amortization of an unrecognized gain or loss (excluding asset gains and losses not yet reflected in market-related value) shall be included as a component of net pension cost for a year if, as of the beginning of the year, that unrecognized net gain or loss exceeds 10 percent of the greater of the projected benefit obligation or the market-related value of plan assets. If amortization is required, the minimum amortization shall be that excess divided by the average remaining service period of active employees expected to receive benefits under the plan. If all or almost all of a plan's participants are inactive, the average remaining life expectancy of the inactive participants shall be used instead of average remaining service life.

Any systematic method of amortization of gains and losses may be used in lieu of the minimum specified in the previous paragraph provided that the minimum is used in any period in which the minimum is greater (reduces the net balance by more), the method is applied consistently, the method is applied similarly to both gains and losses, and the method is disclosed.

The gain or loss component of net periodic pension cost shall consist of the difference between the actual return on plan assets and the expected return on plan assets and amortization of the unrecognized net gain or loss from previous periods.

2. A liability (unfunded accrued pension cost) shall be recognized if net periodic pension cost recognized pursuant to Statement No. 87 exceeds amounts the employer has contributed to the plan. An asset (prepaid pension cost) shall be recognized if net periodic pension cost is less than amounts the employer has contributed to the plan.

If the accumulated benefit obligation exceeds the fair value of plan assets, the employer shall recognize a liability (including unfunded accrued pension cost) that is at least equal to the unfunded accumulated benefit obligation. Recognition of an additional minimum liability is required if an unfunded accumulated benefit obligation exists and an asset has been recognized as a prepaid pension cost, the liability already recognized as unfunded accrued pension cost is less than the unfunded accumulated benefit obligation, or no accrued or prepaid pension cost has been recognized.

If an additional minimum liability is recognized, an equal amount shall be

recognized as an intangible asset, provided that the asset does not exceed the amount of unrecognized prior service cost. If an additional liability required to be recognized exceeds unrecognized prior service cost, the excess (which represents a net loss not yet recognized as a net periodic pension cost) shall be reported as a separate component (reduction) of equity.

When a new determination of the amount of additional liability is made to prepare a balance sheet, the related intangible asset and separate component of equity shall be eliminated or adjusted, as necessary.

3. An employer sponsoring a defined benefit pension plan shall disclose the following information:

a. A description of the plan including employee groups covered, type of benefit formula, funding policy, types of assets held and significant nonbenefit liabilities, if any, and the nature and effect of significant matters affecting comparability of information for all period presented.

b. The amount of net periodic pension cost for the period showing separately the service cost component, the interest cost component, the actual return on assets for the period, and the net total of other components.

c. A schedule reconciling the funded status of the plan with amounts reported in the employer's balance sheet, showing separately, the fair value of plan assets, the projected benefit obligation identifying the accumulated benefit obligation and the vested benefit obligation, the amount of unrecognized prior service cost, the amount of unrecognized net gain or loss including asset gains and losses not yet reflected in market-related value), the amount of any remaining unrecognized net obligation or net asset existing at the date of initial application of Statement No. 87, the amount of any additional liability recognized, and the amount of net pension asset or liability recognized in the balance sheet (which is the net result of combining the previous six items).

d. The weighted-average assumed discount rate and rate of compensation increase (if applicable) used to measure the projected benefit obligation and the weighted-average expected long-term rate of return on plan assets.

e. If applicable, the amount and type of securities of the employer and related parties included in plan assets, and the approximate amount of annual benefits of employees and retirees covered by annuity contracts issued by the employer and related parties. Also, if applicable, the alternative amortization periods used.

f. An employer that sponsors two or more separate defined benefit pension plans shall determine net periodic pension cost, liabilities, and assets by separately applying the provisions of Statement No. 87 to each plan. In particular, unless an employer clearly has a right to use the assets of one plan to pay benefits of another, a liability required to be recognized for one plan shall not be reduced or eliminated because another plan has assets in excess of its accumulated benefit obligation or because the employer has prepaid pension cost related to another plan.

The required disclosures may be aggregated for all of an employer's single-employer defined benefit plans, or plans may be disaggregated into groups so as to provide the most useful information. Plans with assets in excess of the accumulated benefit obligation, however, shall not be aggregated with plans that have accumulated benefit obligations that exceed plan assets.

Annuity Contracts

An annuity contract is a contract in which an insurance company unconditionally undertakes a legal obligation to provide specified benefits to specific individuals in return for a fixed consideration or premium. An annuity contract is irrevocable and involves the transfer of significant risk from the employer to the insurance company. Some annuity contracts (participating annuity contracts) provide that the purchaser (either the plan or the employer) may participate in the experience of the insurance company. Under these contracts, the insurance company ordinarily pays dividends to the purchaser. If the substance of a participating contract is such that the employer remains subject to all or most of the risks and rewards associated with the benefit obligation covered and the assets transferred to the insurance company, that contract is not an annuity contract for purposes of Statement No. 87.

To the extent that benefits currently earned are covered by annuity contracts, the cost of these benefits shall be the cost of purchasing the contracts, except as noted below. That is, if all benefits attributed by the plan's benefits formula to service in the current period are covered by nonparticipating annuity contracts, the cost of the contracts determines the service cost component of net pension cost for that period.

Benefits provided by the pension benefit formula beyond benefits provided by annuity contracts (for example, benefits related to future compensation levels) shall be accounted

for according to the provisions applicable to plans not involving insurance contracts.

Benefits covered by annuity contracts shall be excluded from the projected benefit obligation and the accumulated benefit obligation. Except as noted below, annuity contracts shall be excluded from plan assets.

Some annuity contracts provide that the purchaser (either the plan or the employer) may participate in the experience of the insurance company. Under these contracts, the insurance company ordinarily pays dividends to the purchaser, the effect of which is to reduce the cost of the plan. The purchase price of a participating annuity contract ordinarily is higher than the price of an equivalent contract without participation rights. The cost of the participation right shall be recognized, at the date of purchase, as an asset. In subsequent periods, the participation right shall be measured at its fair value if the contract is such that the fair value is reasonably estimable. Otherwise, the participation right shall be measured at its amortized cost (not in excess of its net realizable value), and the cost shall be amortized systematically over the expected dividend period under the contract.

Other Contracts With Insurance Companies

Insurance contracts that are, in substance, equivalent to the purchase of annuities shall be accounted for as such. Other contracts with insurance companies shall be accounted for as investments and measured at fair value. For some contracts, the best available evidence of fair value may be contract value. If a contract has a determinable cash surrender value or conversion value, that is presumed to be its fair value.

Defined Contribution Plans

A defined contribution pension plan is a plan that provides pension benefits in return for services rendered, provides an individual account for each participant, and has terms that specify how contributions to the individual's accounts are to be determined rather than the amount of pension benefits the individual is to receive. Under a defined contribution plan, the pension benefits a participant will receive depend only upon the amount contributed to the participant's account, the returns earned on investments of those contributions, and forfeitures of other participants' benefits that may be allocated to the participant's account.

To the extent that a plan's defined contributions to an individual's account

are to be made for periods in which that individual renders services, the net pension cost for a period shall be the contribution called for in that period. If a plan calls for contributions for periods after an individual retires or terminates, the estimated cost shall be accrued during the employee's service period.

An employer that sponsors one or more defined contribution plans shall disclose the following separately from its defined benefit plan disclosures:

1. A description of the plan(s) including employee groups covered, the basis for determining contributions, and the nature and effect of significant matters affecting comparability of information for all periods presented.

2. The amount of cost recognized during the period.

A pension plan having characteristics of both a defined benefit plan and a defined contribution plan requires careful analysis. If the substance of the plan is to provide a defined benefit, as may be the case with some "target benefit" plans, the accounting and disclosure requirements shall be determined in accordance with the provisions applicable to a defined benefit plan.

Multiemployer Plans

A multiemployer plan is a pension plan to which two or more unrelated employers contribute, usually pursuant to one or more collective-bargaining agreements. A characteristic of multiemployer plans is that assets contributed by one participating employer may be used to provide benefits to employees of other participating employers since assets contributed by an employer are not segregated in a separate account or restricted to provide benefits only to employees of that employer.

An employer participating in a multiemployer plan shall recognize as net pension cost, the required contribution for the period and shall recognize as a liability, any contributions due and unpaid. The required contribution includes both current costs and prior service costs. If an employer elects to fund prior service cost in full at the inception of the plan, the total payment becomes the employer's required contribution, and accordingly, its pension cost for the period.

The following provisions are applicable to RUS borrowers participating in a multiemployer pension plan:

1. An electric utility participating in a multiemployer plan may defer current period pension expenses if the provisions of Statement of Financial

Accounting Standards No. 71 (Statement No. 71), Accounting for the Effects of Certain Types of Regulation, are applied.

Under the provisions of Statement No. 71, pension costs may be deferred provided such costs are recovered through future rates.

2. An electric utility instituting an amendment to the NRECA Retirement and Security plan enters into a contractual agreement to pay the costs incurred (prior service pension costs) for the amendment. In such cases, the agreement is noncancelable and payable regardless of continued participation in the plan.

Since the utility is unconditionally committed to making these payments and such payments are not contingent upon the utility's continued participation in the plan, the recognition of that liability is appropriate. The costs associated with this liability shall be expensed, in their entirety, when the liability is recognized.

The accounting journal entries required to record the transactions associated with a multiemployer pension plan are as follows:

SAMPLE 1—CURRENT PENSION EXPENSE

The journal entry required to record the normal costs associated with the NRECA Retirement and Security Program is as follows:

Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 131.1, Cash—General
To record the payment of pension costs to NRECA.

Note: This entry shall not be recorded during the moratorium.

SAMPLE 2—PRIOR SERVICE PENSION EXPENSE

The journal entries required to record the prior service costs associated with the NRECA Retirement and Security Program are as follows:

1. If the RUS borrower elects to pay the prior service pension costs in full, and there is no deferral of costs under the provision of Statement No. 71, the following entry shall be recorded:
Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 131.1, Cash—General
To record the payment of prior service pension costs to NRECA.

2. If the RUS borrower elects to finance prior service pension costs over a period of years and there is no deferral of costs under

the provisions of Statement No. 71, the following entries shall be recorded:

Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 224, Other Long-Term Debt

To record the liability to NRECA for prior service pension costs.

Dr. 224, Other Long-Term Debt

Dr. 427, Interest on Long-Term Debt

Cr. 131.1, Cash—General

To record the annual payment to NRECA for prior service pension costs.

3. If the RUS borrower elects to finance prior service pension costs over a period of years and such costs are being deferred and amortized in accordance with the provisions of Statement No. 71, the following entries shall be recorded:

Dr. 182.3, Other Regulatory Assets

Cr. 224, Other Long-Term Debt

To record the liability to NRECA for prior service pension costs.

Dr. Various Operations, Maintenance, and Administrative Expense Accounts

Dr. 107, Construction Work-in-Progress

Dr. 108.8, Retirement Work-in-Progress

Cr. 182.3, Other Regulatory Assets

To record the amortization of deferred prior service pension costs.

Dr. 224, Other Long-Term Debt

Dr. 427, Interest on Long-Term Debt

Cr. 131.1, Cash—General

To record the annual payment to NRECA for prior service pension costs.

4. If the RUS borrower elects to pay the prior service pension costs in full and such costs are being deferred and amortized in accordance with the provisions of Statement No. 71, the following entries shall be recorded:

Dr. 182.3, Other Regulatory Assets

Cr. 131.1, Cash—General

To record the payment to NRECA for prior service pension costs.

Dr. Various Operations, Maintenance, and Administrative Expense Accounts

Dr. 107, Construction Work-in-Progress

Dr. 108.8, Retirement Work-in-Progress

Cr. 182.3, Other Regulatory Assets

To record the amortization of deferred prior service pension costs.

It should be noted that although the above entries relate specifically to the NRECA Retirement and Security Program, they are applicable to all multiemployer pension plans.

An employer that participates in one or more multiemployer plans shall disclose the following separately from disclosures for a single-employer plan:

1. A description of the multiemployer plan(s) including the employee groups covered, the type of benefits provided (defined benefit or defined contribution), and the nature and effect of significant matters affecting comparability of information for all periods presented.

2. The amount of cost recognized during the period.

Multiple-Employer Plans

A multiple-employer plan is, in substance, aggregations of single-employer plans combined to pool their assets for investment purposes to reduce the cost of plan administration. Under a multiple-employer plan, assets are segregated and specifically identified to an employer. In addition, such plans may have features that allow participating employers to have different benefit formulas. Such plans shall be considered single-employer plans for financial accounting purposes and each employer's accounting shall be based upon its respective interest in the plan.

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608 Training Costs, Attendance at Meetings, Etc.

Utilities engage in many types of training programs. Seminars are conducted for directors, managers, office managers, attorneys, engineers, and others. Bookkeepers and office managers attend accountants' meetings. Safety engineers attend safety schools and subsequently conduct regular safety meetings at the cooperative. Costs incurred for the various types of training activities shall be accounted for as follows:

1. Managers' and directors' expenses to attend the NRECA national and state conventions shall be charged to Account 930.2, Miscellaneous General Expenses.
2. Management or engineering seminar fees, salary time attending such seminars including the associated pensions and benefits expense and payroll taxes, and the related per diem and expenses shall be charged to the functional expense accounts. Salaries paid to employees shall also be charged to the appropriate functional expense account. Fees and expenses for directors' attendance shall be charged to Account 930.2, Miscellaneous General Expenses.
3. When the office manager, bookkeeper, or work order clerk attends a state or regional accounting meeting, their salary time and the associated employee pensions and benefits and social security and other payroll taxes shall be charged to the account to which the employees' time is ordinarily charged.

4. Employees' salary time employee and the associated pensions and benefits and social security and other payroll taxes spent attending regular safety meetings conducted by the cooperative shall be charged to the account to which the employees' time is ordinarily charged.

5. A safety engineer's salary time and the associated employee pensions and benefits and social security and other payroll taxes spent attending a statewide safety school shall be charged to Account 925, Injuries and Damages.

6. The salary time and the associated employee pensions and benefits and social security and other payroll taxes spent by a manager or line foreman conducting weekly safety meetings shall be charged to the appropriate functional expense accounts including Account 590, Maintenance, Supervision and Engineering, and Account 920, Administrative and General Services.

* * * * *

618 Theft Losses Not Covered by Insurance

Utilities may suffer losses as a result of thefts of cash, materials and supplies, equipment, or electric plant-in-service that is not covered by insurance. The charges for nominal uninsured losses shall be recorded in the following accounts:

1. Cash—Account 924, Property Insurance, shall be charged.
2. Plant materials and operating supplies—Account 163, Stores Expense Undistributed, shall be charged.
3. Equipment—Account 163, Stores Expense Undistributed, shall be charged for stores equipment; and Account 184, Transportation Expense—Clearing, for transportation and garage equipment. The appropriate miscellaneous operations or administrative expense account (Account 506, 524, 539, 549, 566, 588, 905, 910, 916, or 930.2, as appropriate) shall be charged for all other equipment.
4. Electric Plant-in-Service—A retirement work order shall be prepared for electric plant constituting a unit of property. The loss due to retirement shall be charged to Account 108.6, Accumulated Provision for Depreciation of Distribution Plant. If the plant does not constitute a retirement unit, the loss shall be charged to the appropriate maintenance expense account.

* * * * *

627 Postretirement Benefits

Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other than Pensions (Statement No. 106), requires reporting entities to accrue the expected cost of postretirement benefits during the years the employee provides service to the entity. For purposes of applying the provisions of Statement No. 106, members of the board of directors are considered to be employees of the

cooperative. Prior to the issuance of Statement No. 106, most reporting entities accounted for postretirement benefit costs on a "pay-as-you-go" basis; that is, costs were recognized when paid, not when the employee provided service to the entity in exchange for the benefits.

As defined in Statement No. 106, a postretirement benefit plan is a deferred compensation arrangement in which an employer promises to exchange future benefits for an employee's current services. Postretirement benefit plans may be funded or unfunded. Postretirement benefits include, but are not limited to, health care, life insurance, tuition assistance, day care, legal services, and housing subsidies provided outside of a pension plan.

This statement applies to both written plans and to plans whose existence is implied from a practice of paying postretirement benefits. An employer's practice of providing postretirement benefits to selected employees under individual contracts with specified terms determined on an employee-by-employee basis does not, however, constitute a postretirement benefit plan under the provisions of this statement.

Postretirement benefit plans generally fall into three categories: single-employer defined benefit plans, multi-employer plans, and multiple-employer plans.

The accounting requirements set forth in this interpretation focus on single- and multiple-employer plans. The accounting requirements set forth in Statement No. 106 for multiemployer plans or defined contribution plans shall be adopted for borrowers electing those types of plans.

Under the provisions of Statement No. 106, there are two components of the postretirement benefit cost: the current period cost and the transition obligation. The transition obligation is a one-time accrual of the costs resulting from services already provided. Statement No. 106 allows the transition obligation to be deferred and amortized on a straight-line basis over the average remaining service period of the active employees. If the average remaining service life of the employees is less than 20 years, a 20-year amortization period may be used.

Accounting Requirements

All RUS borrowers must adopt the accrual accounting provisions and reporting requirements set forth in Statement No. 106. The transition obligation and accrual of the current period cost must be based upon an actuarial study. This study must be updated to allow the borrower to

comply with the measurement date requirements of Statement No. 106; however, the study must, at a minimum, be updated every five years. RUS will not allow electric borrowers to account for postretirement benefits on a "pay-as-you-go" basis.

The deferral and amortization of the transition obligation does not require RUS approval provided that it complies with the provisions of Statement No. 106. If, however, a borrower elects to expense the transition obligation in the current period and subsequently defer this expense in accordance with Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, the deferral must be approved by RUS. In those states in which the commission will not allow the recovery of the transition obligation through future rates, the transition obligation must be expensed, in its entirety, in the year in which Statement No. 106 is adopted. A portion of the transition obligation may be charged to construction and retirement activities provided such charges are properly supported.

Effective Date and Implementation

For plans outside the United States and for defined benefit plans of employers that (a) are nonpublic enterprises and (b) sponsor defined benefit postretirement plans with no more than 500 plan participants in the aggregate, Statement No. 106 is effective for fiscal years beginning after December 15, 1994. For all other plans, Statement No. 106 is effective for fiscal years beginning after December 15, 1992.

RUS borrowers must comply with the implementation dates set forth in Statement No. 106. At the time of the adoption of Statement No. 106, rates must be in place sufficient to recover the current period expense and any amortization of the transition obligation. A copy of a board resolution or commission order, as appropriate, indicating that the transition obligation and current period expense have been included in the borrower's rates must be submitted to RUS.

Accounting Journal Entries—Transition Obligation

The journal entries required to record the transition obligation are as follows:

1. If the borrower elects to expense the transition obligation in the current

period and there is no deferral of costs, the following entry shall be recorded:

Dr. 435.1, Cumulative Effect on Prior Years of a Change in Accounting Principle or
Dr. 926, Employee Pensions and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 228.3, Accumulated Provision for Pensions and Benefits
To record the current period recognition of the transition obligation for postretirement benefits.

Note: A portion of the transition obligation may be charged to construction and retirement activities provided such charges are properly supported.

2. If the borrower elects to defer and amortize the transition obligation in accordance with the provisions of Statement No. 71, the following entry shall be recorded:

Dr. 182.3, Other Regulatory Assets
Cr. 228.3, Accumulated Provision for Pensions and Benefits
To record the deferral of the transition obligation under the provisions of Statement No. 71.
Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 182.3, Other Regulatory Assets
To record the amortization of postretirement benefits expenses as they are recovered through rates in accordance with Statement No. 71.

3. The deferral and amortization of the transition obligation under the provisions of Statement No. 106 is considered to be an off balance sheet item. If, therefore, the borrower elects to defer and amortize the transition obligation on a straight-line basis over the average remaining service period of the active employees or 20 years in accordance with Statement No. 106, no entry is required. Instead, the transition obligation is recognized as a component of postretirement benefit cost as it is amortized. It should be noted, however, that the amount of the unamortized transition obligation must be disclosed in the notes to the financial statements.

Accounting Journal Entries—Current Period Expense

The current period postretirement expense should be recorded by the following entry:

Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 228.3, Accumulated Provision for Pensions and Benefits
To record current period postretirement benefit expense.
Dr. 228.3X, Accumulated Provision for Pensions and Benefits—Funded

Cr. 131.1, Cash—General
To record cash payments on a "pay-as-you-go" basis for postretirement benefits.

Accounting Journal Entry—Funding

If a borrower elects to voluntarily fund its postretirement benefits obligation in an external, irrevocable trust, the following entry shall be recorded:

Dr. 228.3X, Accumulated Provision for Pensions and Benefits—Funded
Cr. 131.1, Cash—General
To record the funding of postretirement benefits expense into an external, irrevocable trust.

If a borrower elects to voluntarily fund its postretirement benefits obligation in an investment vehicle other than an external, irrevocable trust, the following entry shall be recorded:

Dr. 128, Other Special Funds
Cr. 131.1, Cash—General
To record the funding of postretirement benefits expense into an investment vehicle other than an external, irrevocable trust.

628 Postemployment Benefits

Statement of Financial Accounting Standards No. 112, Employers' Accounting for Postemployment Benefits (Statement No. 112) establishes the standards of financial accounting and reporting for employers who provide benefits to former or inactive employees after employment but before retirement. Inactive employees are those who are not currently rendering service to the employer but who have not been terminated, including employees who are on disability leave, regardless of whether they are expected to return to active service. For purposes of applying the provisions of Statement No. 112, former members of the board of directors are considered to be employees of the cooperative.

Postemployment benefits include benefits provided to former or inactive employees, their beneficiaries, and covered dependents. They include, but are not limited to, salary continuation, supplemental benefits (including workmen's compensation), health care, job training and counseling, and life insurance coverage. Benefits may be provided in cash or in kind and may be paid upon cessation of active employment or over a specified period of time.

The cost of providing postemployment benefits is considered to be a part of the compensation provided to an employee in exchange for current service and should, therefore, be accrued as the employee earns the right to be paid for future postemployment benefits. Applying the

criteria set forth in Statement of Financial Accounting Standards No. 43, Accounting for Compensated Absences, a postemployment benefit obligation is accrued when all of the following conditions are met:

1. The employer's obligation for payment for future absences is attributable to employees' services already performed;

2. The obligation relates to employee rights that vest or accumulate. Vested rights are considered those rights for which the employer is obligated to make payment even if the employee terminates. Rights that accumulate are those earned, but unused rights to compensated absences that may be carried forward to one or more periods subsequent to the period in which they are earned;

3. Payment of the compensation is probable; and

4. The amount can be reasonably estimated.

If all of these conditions are not met, the employer must account for its postemployment benefit obligation in accordance with Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (Statement No. 5) when it becomes probable that a liability has been incurred and the amount of that liability can be reasonably estimated.

If an obligation for postemployment benefits is not accrued in accordance with the provisions of Statement No. 5 or Statement No. 43 only because the amount cannot be reasonably estimated, the financial statements should disclose that fact.

Accounting Requirements

All RUS borrowers must adopt the accrual accounting provisions and reporting requirements set forth in Statement No. 112 as of the statement's implementation date. A portion of the cumulative effect may be charged to construction and retirement activities provided such charges are properly supported. If a borrower elects to defer the cumulative effect of implementing Statement No. 112 in accordance with the provisions of Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, the deferral must be approved by RUS.

Effective Date and Implementation

Statement No. 112 is effective for fiscal years beginning after December 15, 1993. Previously issued financial statements should not be restated.

RUS borrowers must comply with the implementation date set forth in Statement No. 112. At the time of the

adoption of Statement No. 112, rates must be in place sufficient to recover the current period expense.

Accounting Journal Entries

The journal entries required to account for postemployment benefits are as follows:

Dr. 435.1, Cumulative Effect on Prior Years of a Change in Accounting Principle
Dr. 107, Construction Work in Progress
Dr. 108.8, Retirement Work in Progress
Cr. 228.3, Accumulated Provision for Pensions and Benefits

To record the cumulative effect of implementing Statement No. 112.

Note: A portion of the cumulative effect may be charged to construction and retirement activities provided such charges are properly supported. Account 435.1 is closed to Account 219.2, Nonoperating Margins.

If the borrower elects to defer and amortize the cumulative effect in accordance with the provisions of Statement No. 71, the following entry shall be recorded:

Dr. 182.3, Other Regulatory Assets
Cr. 228.3, Accumulated Provision for Pensions and Benefits
To record the deferral of the cumulative effect of implementing Statement No. 112 in accordance with the provisions of Statement No. 71.

Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work in Progress
Dr. 108.8, Retirement Work in Progress
Cr. 182.3, Other Regulatory Assets
To record the amortization of the cumulative effect of implementing Statement No. 112 as it is recovered through rates in accordance with Statement No. 71.

Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work in Progress
Dr. 108.8, Retirement Work in Progress
Cr. 228.3, Accumulated Provision for Pensions and Benefits
To record current period postemployment benefit expense.

Note: If postemployment benefits are accrued under the criteria set forth in Statement No. 43, this journal entry is made on a monthly basis. If, however, the accrual is based upon the provisions of Statement No. 5, this is a one-time entry unless the liability is reevaluated and subsequently adjusted.

23. In § 1767.41, Interpretation Nos. 630 and 631 are proposed to be added to read as follows:

* * * * *

630 Split Dollar Life Insurance

The National Rural Electric Cooperative Association Split Dollar Life Insurance provides life insurance benefits to cooperative employees. The benefits provided under this policy consist of two components, the face

value of the insurance policy and the accumulated cash surrender value. While the employee is the owner of the policy, the employee must sign a collateral assignment giving the cooperative absolute right to the cash surrender value of the policy. Under the terms of this collateral assignment, the employee must reimburse the cooperative for the premiums paid upon the employee's termination of employment or attainment of the age of 62 if the employee wishes to maintain the insurance coverage. If death occurs prior to either of these events, the premiums paid to date by the cooperative are deducted from the death benefits payable to the policy beneficiary.

Accounting Requirements

Financial Accounting Standards Board Technical Bulletin 85-4, Accounting for Purchase of Life Insurance (Bulletin 85-4), states that the amount that could be realized under an insurance contract as of the date of the financial statements should be reported as an asset. The change in the cash surrender or contract value of that asset during the period should be reported as an adjustment to the premiums paid in determining the expense or income to be recognized for the period. The cooperative shall, therefore, record the cash surrender value of the policy as an asset in Account 124, Other Investments, because of its absolute right to receive that value based upon the employee's collateral assignment. Any receivable that may occur as a result of the employee reimbursement for the premiums paid is contingent upon the employee electing to maintain the insurance coverage after termination of employment or reaching the age of 62 and is not recorded as an asset on the cooperative's records.

631 Special Early Retirement Plan

The Special Early Retirement Plan (SERP) being offered through the National Rural Electric Cooperative Association (NRECA) constitutes an amendment to its Retirement and Security (R&S) program. The SERP is often chosen as a vehicle through which the cooperative may reduce the size of its workforce or replace more highly paid employees with lower paid entry level employees. If an employee covered by an NRECA retirement plan chose to retire before his/her normal retirement date, that employee would receive an actuarially reduced benefit. However, when a cooperative elects to offer a SERP, no such reduction is required. The cooperative selects the criteria under which an employee will be

eligible to participate such as age, years of service, or a combination of age and benefit service requirements. As with other amendments to the R&S program, NRECA calculates the cost of the plan based upon the criteria selected by the cooperative and allows the cooperative to pay the cost immediately or on an installment basis.

Under this plan, the employee receives full retirement benefits in the form of either an immediate lump-sum settlement or annuity payments. It is not unusual for the cooperative to add an incentive to encourage participation such as medical or life insurance, either in whole or in part, until age 65. The actuarial analysis provided by NRECA includes the cost of the SERP and the estimated reduction and/or increase in costs associated with Statement of Financial Accounting Standards No. 106, Employer's Accounting for Postretirement Benefits Other Than Pensions (Statement No. 106).

Statement of Financial Accounting Standards No. 87, Employer's Accounting for Pensions (Statement No. 87)

In accordance with the provisions of Statement No. 87, the costs associated with an amendment to a multiemployer plan are recognized when they become due and payable. Since NRECA calculates the amount due and payable at the time of the amendment, the entire amount due, whether paid immediately or financed through NRECA or any other institution, must be recognized as an expense at that time. This cost may, however, be deferred in accordance with the provisions of Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation (Statement No. 71).

Accounting Journal Entries

The journal entry required to record the additional pension costs associated with the SERP is as follows:

Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work-in-Progress

Dr. 108.8, Retirement Work-in-Progress
Cr. 131.1, Cash—General or
Cr. 224, Other Long-Term Debt
To record the prior service pension costs incurred as a result of adopting the SERP.

If the borrower elects to defer and amortize the cost in accordance with Statement No. 71, the following entries shall be recorded:

Dr. 182.3 Other Regulatory Assets
Cr. 131.1, Cash—General, or
Cr. 224, Other Long-Term Debt
To record, under the provisions of Statement No. 71, the deferral of the prior service pension costs incurred as a result of adopting the SERP.
Dr. Various Operations, Maintenance, and Administrative Expense Accounts
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 182.3, Other Regulatory Assets
To record the amortization of deferred prior service pension costs as they are recovered through rates in accordance with Statement No. 71.

Statement No. 106

In the event that net reductions in postretirement benefits result from this plan amendment, the reductions are recognized as follows:

1. The amount of the reduction shall first reduce any existing unrecognized prior service cost;
2. Any remaining reductions shall next reduce any unrecognized transition obligation; and
3. Any remaining reduction shall be recognized in a manner consistent with the accounting for prior service postretirement benefit costs.

In accordance with Statement No. 106, prior service postretirement benefit costs are recognized in equal amounts in each remaining year of service for active plan participants. Because it is an off-balance sheet item, only a memorandum entry is required to reduce the amount of unrecognized prior service cost.

At adoption, Statement No. 106 permitted the recognition of the transition obligation in one of two ways. The transition obligation was recognized over the longer of the

average remaining service period of current plan participants or 20 years, or it may have been recognized immediately. If the delayed recognition option was chosen under Statement No. 106, this, too, was an off-balance sheet item that requires only a memorandum entry to reduce the amount of unrecognized transition obligation. However, if the immediate recognition option was chosen, the cooperative either recorded the expense in that year or, with RUS approval, deferred the expense under the provisions of Statement No. 71. If the expense were recorded, in total, in the year of adoption, no unrecognized transition obligation remains to reduce. If, however, the transition obligation was deferred in accordance with Statement No. 71, the journal entry required to effect the reduction in Statement No. 106 expense is as follows:

Dr. 228.3, Accumulated Provision for Pensions and Benefits
Cr. 182.3, Other Regulatory Assets
To record a reduction in the deferred Statement No. 106 transition obligation resulting from the adoption of the SERP.

Note: The dollar value of this entry must not exceed the deferral shown on the balance sheet.

If, after the two previous reductions have been made, any net credit remains, it shall be recognized in a manner consistent with prior service costs; that is, as an off balance sheet item that is amortized over the remaining service lives (to full eligibility) of the active plan participants. The annual amortization reduces amounts normally charged to the various operations, maintenance, and administrative expense accounts and Account 228.3 as postretirement benefit expenses.

Dated: April 8, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It

may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/nara/fedreg/fedreg.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/.

Some laws may not yet be available.

H.R. 785/P.L. 105-10

To designate the J. Phil Campbell, Senior, Natural Resource Conservation Center. (Apr. 24, 1997; 111 Stat. 21)

H.R. 1225/P.L. 105-11

To make a technical correction to title 28, United States Code, relating to jurisdiction for lawsuits against terrorist states. (Apr. 25, 1997; 111 Stat. 22)

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 29, 1997**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; ✓✓approval and promulgation; various States; air quality planning purposes; designation of areas:

Maine; published 2-28-97

FEDERAL EMERGENCY MANAGEMENT AGENCY

Flood insurance program:

Flood mitigation assistance; published 3-20-97

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Animal drugs, feeds, and related products:

New drug applications—
Decoquinat; published 4-29-97

Sulfadimethoxine injection; published 4-29-97

HEALTH AND HUMAN SERVICES DEPARTMENT**Inspector General Office, Health and Human Services Department**

Medicaid and Medicare programs:

Fraud and abuse—

State utilization and quality control peer review organizations; program sanctions imposition and adjudication for failing to meet statutory obligations; published 4-29-97

INTERIOR DEPARTMENT**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Arkansas; published 4-29-97

Texas; published 4-29-97

SECURITIES AND EXCHANGE COMMISSION

Securities:

Restricted securities resales; shorter holding period requirements; published 2-28-97

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Honey research, promotion, and consumer information order; comments due by 5-6-97; published 3-7-97

Milk marketing orders:

Eastern Colorado; comments due by 5-8-97; published 4-8-97

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

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Brucellosis in cattle and bison—
State and area classifications; comments due by 5-5-97; published 3-6-97

Plant-related quarantine, domestic:

Asian longhorned beetle; comments due by 5-6-97; published 3-7-97

AGRICULTURE DEPARTMENT**Federal Crop Insurance Corporation**

Crop insurance regulations:

Popcorn; comments due by 5-9-97; published 4-9-97

AGRICULTURE DEPARTMENT**Rural Business-Cooperative Service**

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AGRICULTURE DEPARTMENT**Rural Telephone Bank**

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AGRICULTURE DEPARTMENT**Rural Utilities Service**

Telephone loans:

Telecommunications loan program; policies, types, and requirements; comments due by 5-6-97; published 3-7-97

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

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Aleutian Islands shortraker and rougheye rockfish; comments due by 5-6-97; published 4-25-97

Pacific cod; comments due by 5-5-97; published 4-18-97

Magnuson Act provisions and Northeastern United States fisheries—

Experimental fishing permit applications; comments due by 5-9-97; published 4-24-97

Northeastern United States fisheries—

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West Coast States and Western Pacific fisheries—

Ocean salmon off coasts of Washington, Oregon, and California; comments due by 5-9-97; published 4-24-97

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 Desert bighorn sheep; Peninsular Ranges population; comments due by 5-7-97; published 4-7-97
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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Conference Room 3470
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WHERE: Phillip Burton Federal Building and
Courthouse
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San Francisco, CA 94102

Anchorage, AK

WHEN: May 23, 1997 at 9:00 am to 12:00 noon
WHERE: Federal Building and U.S. Courthouse
222 West 7th Avenue
Executive Dining Room (Inside Cafeteria)
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